(2016) 11 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 6059 of 2005 (O&M)

M/s Bedi Sons Steels & Wires APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 21(1)

Citation : (2016) 11 P&H CK 0052

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Abhimanyu Kalsy, Advocate, for the Petitioner; Piyush Bansal, DAG Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J. - Aggrieved against the notices dated 4.3.2005 (Annexures P-6 to P-9) issued under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short, ''the Act''), for suo-moto revision of the assessments for the assessment years 1988-89, 1989-90, 1990-91 and 1991-92, the petitioner has filed the present petition.

2. Legal issue raised is that the four notices dated 4.3.2005 were issued for revision about 10 years after passing of the order of assessment, which is beyond maximum period prescribed under the Act for any action. The dates on which assessments were framed for different years are as under:

Assessment years Date

1988-89 22.06.1995

1989-90 22.06.1995

1990-91 23.06.1995

3. The identical issue was considered by Hon''ble the Supreme Court in State of

Punjab and others v. Bhatinda District Coop. Milk P.Union Limited (2007) 10 VST 180. It was observed that even if no period of limitation is provided under the Act for exercise of revisional jurisdiction that does not mean that the power can be exercised at any time. Five years period was held to be the final limit. Notice issued in that case after a period of five and a half years was set aside. The issue regarding maintainability of the writ petition against the show cause notice was also considered and it was opined that the revisional authority could not have gone into the issue sought to be raised in the writ petition being creature of statute. Relevant paras of the judgment are extracted below:-

"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in subsection (6) of Section 11 of the Act is five years.

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23. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5? years.

24. Question of limitation being a jurisdictional question, the writ petition was maintainable.

25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21 (1) of the Act. The High Court, furthermore in its judgment, has referred to some binding

precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment."

4. If read in the light of the aforesaid judgment of Hon''ble the Supreme Court, the notice issued for revising the assessment after about ten years certainly deserves to be set aside on account of delay. The ground on which revisional power is sought to be exercised is irrelevant as the delay has not been explained.

5. For the reasons mentioned above, the writ petition is allowed. The impugned notice dated 4.3.2005 (Annexures P-6 to P9), are set aside.