(2010) 06 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11220 of 2010

New Model Industries (Pvt.) Ltd. — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 44 VST 165

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of recovery proceedings initiated vide notice dated April 12, 2010, annexure P1, and order of reassessment dated October 31, 2006, annexure P2, under the provisions of the Punjab General Sales Tax Act, 1948.

2. The petitioner-assessee is engaged in construction of motor vehicles. It supplied vehicles to Delhi Transport Corporation in assessment year 2001-02. There was raid on the business premises of the petitioner and best judgment assessment was made and demand of tax was raised, followed by order of reassessment dated October 31, 2006. The said order attained finality. Thereafter, proceedings for recovery of assessed tax have been initiated, against which the present writ petition has been filed, inter alia, on the ground that the assessment itself was without jurisdiction, inasmuch as condition precedent for reassessment did not exist. It is also submitted that inter-State sales could not be subjected to tax under the State law and that there was violation of principles of natural justice.

3. We are of the view that the petition is liable to be dismissed on the ground of laches without going into the merits of the case. No explanation whatsoever has been given in the writ petition as to why the petition has been filed after delay of

more than three years from the date of accrual of cause of action. No steps were earlier taken by the petitioner to challenge the order of assessment dated October 31, 2006. Only submission made on this aspect is that the petitioner has challenged order of assessment when recovery proceedings were initiated and if order of assessment was fundamentally erroneous, the same could be challenged at any time.

4. We are unable to accept the submission. It is well-settled that for invoking jurisdiction under article 226 of the Constitution, the petitioner should come to the court at the earliest reasonable opportunity. Reference may be made to judgment of Constitution Bench of the honourable Supreme Court in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , paras 10, 41 and 65. The principles laid down therein have been reiterated, inter alia, in Eastern Coalfields Ltd. Vs. Dugal Kumar, , paras 24 to 29.

5. The learned counsel for the petitioner relies upon the judgments of the honourable Supreme Court in Provincial Government of Madras (Now Andhra Pradesh) v. J. S. Basappa (1964) 15 STC 144 and Raza Textiles Ltd. Vs. Income Tax Officer, Rampur, and judgment of the Andhra Pradesh High Court in Public Prosecutor (A. P.) v. Mukha Singh Chanda (1967) 19 STC 426 to submit that inspire of delay, the petition may be entertained. The judgments relied upon are distinguishable.

6. In J. S. Basappa (1964) 15 STC 144 (SC), proceedings arose out of the suit for refund of tax illegally collected. It was held that the suit for recovery of tax illegally collected was not barred u/s 18A of the Madras General Sales Tax Act, 1939. Finality to order of assessment could not be a bar to maintainability of the suit, when order was without jurisdiction. In Raza Textiles Ltd. Vs. Income Tax Officer, Rampur, , it was held that if an order was without jurisdiction, even if the appeal was not filed, the same could be interfered with in writ jurisdiction. In The Public Prosecutor (A.P.) Vs. Mukha Singh Chanda and Others, , it was held that validity of order of reassessment passed without complying with the statutory procedure could be examined at appropriate forum. These judgments do not consider the principle of laches. There is no doubt that an order, which is without jurisdiction, can be challenged in a writ petition but the remedy of writ must be invoked expeditiously and if the same suffers from laches, the court may not interfere with the same, as already observed.

7. In view of above, we do not find any ground to interfere.

8. The petition is dismissed.

9. Before parting with the order, we direct the registry to send a copy of this order to the Chief Secretary, Punjab, who may require the concerned authority to look into the reasons, if any, for gross delay in initiating proceedings for recovery and take further action against concerned defaulting persons and also to take remedial steps to avoid such gross delay in recovering public money.