(2011) 12 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 22342 of 2011 (O and M)

Pankaj Motors APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 65

Citation : (2013) 57 VST 463

Hon'ble Judges : Hemant Gupta, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : Sanjiv Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present petition is to the notice (annexure P4) dated November 18, 2011, whereby the Additional Excise and Taxation Commissioner, in exercise of revisional powers called upon the petitioner to appear before him with complete books of accounts; purchase vouchers or any other evidence in support of assessment finalised by the Excise and Taxation Officer, Moga, vide order dated March 10, 2009, for the assessment years 2005-06 and 2006-07. The petitioner is a registered dealer under the Punjab Value Added Tax Act, 2005 (for short, "the Act") and the Central Sales Tax Act, 1956. The petitioner submitted its sales tax returns for the assessment years 2005-06 and 2006-07. Initially, the assessment was finalised vide order dated December 7, 2007, whereby demands were created against the petitioner. The petitioner filed writ petitions before this court and the orders of assessment were set aside. Thereafter, the assessments have been framed as mentioned above.

2. The Additional Excise and Taxation Commissioner has now issued show-cause notices which has been attached as annexure P4 with the writ petition, on the ground that the order of assessment suffers from illegality and impropriety on the ground mentioned therein. The petitioner has been called upon to appear before the Additional Excise and Taxation Commissioner on December 5, 2011

with the documents mentioned above.

3. The learned counsel for the petitioner has challenged the issuance of the said show-cause notices, inter alia, for the reason:

(i) That the Additional Excise and Taxation Commissioner is not a Commissioner, competent to invoke revisional jurisdiction in terms of section 65 of the Act.

(ii) That the Additional Excise and Taxation Commissioner has acted at the behest of the Assistant Excise and Taxation Commissioner, thus the revisional authority did not apply its own mind as to whether the order passed by the assessing officer, should be revised. It is contended that the revisional authority can exercise jurisdiction of its own motion and not at the instance of a subordinate authority.

(iii) That the entire basis of issuance of show cause notices that the assessment order suffers from illegality, is incorrect as the very basis of exercising the revisional jurisdiction, are not disclosed.

4. Having heard learned counsel for the petitioner at some length, we do not find any merit in the present petition.

5. The "Commissioner" has been defined u/s 2(g) of the Act, to mean, the Excise and Taxation Commissioner appointed by the State Government under sub-section (1) of section 3. Section 3(1) of the Act empowers the State Government to appoint an officer to be the Commissioner and such other officers to assist him as it may deem fit. In exercise of the said powers, the State Government has published notification dated March 31, 2005 designating the Additional Excise and Taxation Commissioner as an officer to exercise the powers u/s 65 of the Act in the whole of the Punjab. Section 65 of the Act empowers the Commissioner or such other designated officer to call for the record or any proceedings at his own motion, which are pending before or have been disposed of by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order. Therefore, the Additional Excise and Taxation Commissioner, who has issued show-cause notices, is the Commissioner in terms of sub-sections (1) and (2) of section 3 of the Act and is competent to exercise jurisdiction as revisional authority.

6. The argument raised that there are more than one Additional Excise and Taxation Commissioners, therefore, there will be multiple authorities to exercise revisional jurisdiction in respect of the same subject-matter and thus, the exercise of jurisdiction suffers from illegality, is not meritorious. The exercise of jurisdiction is by an Additional Excise and Taxation Commissioner under the Act. Whether there are multiple Additional Excise and Taxation Commissioners or not, is the question which does not arise for consideration as there are no pleading to this effect. In view of the notification dated March 31, 2005, an Additional Excise and Taxation Commissioner, is the Commissioner under the Act and competent to invoke the revisional jurisdiction under the Act.

7. In respect of the argument that section 65 of the Act empowers the Commissioner or the designated officer by the Commissioner at his own motion to call for the record of any proceedings which are pending before or have been disposed of by any authority subordinate to him for the purpose of specifying himself as to the legality or propriety of such proceedings or order, would mean exercise of jurisdiction himself without any reference from any other person or authority, is again not tenable. The expression at his own motion would include the information given by any of the subordinate or superior authority or even by any of the parties. The source of information is not important but the satisfaction of the authority in respect of legality and propriety of the proceedings. If the Commissioner is prima facie satisfied that there is illegality or impropriety, he has been empowered to issue show cause notice. After considering the reply, the Commissioner on being satisfied that the order of the assessing officer is suffering from any illegality or impropriety, will have jurisdiction to interfere in the order otherwise, the revisional jurisdiction cannot be exercised.

8. The last argument that reasons for issuing show-cause notice are not made out so as to point out any impropriety or illegality, is an argument raised without submitting reply to consider the merits of the issues raised. Such an argument cannot be examined at this stage. It is for the revisional authority to examine the contentions raised by the petitioner as to whether there is any illegality or impropriety warranting the exercise of the jurisdiction by the revisional authority. We find that the petitioner cannot be permitted to raise such an argument in the writ petition at the threshold for setting aside of show cause notices. In view of the said fact, the petition is dismissed.

