
(2010) 05 P&H CK 0270

In the Punjab And Haryana At Chandigarh

Case No : VAT Revision No"s. 10 and 11 of 2009

Patiala Auto Enterprises

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21, 5(2)

Citation : (2011) 41 VST 503

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—As an identical question of law and facts are involved in both the petitions between the same parties, therefore, we propose to decide the same by this common judgment, in order to avoid the repetition of facts. However, for facilitation, the bare minimum facts that need a necessary mention, have been extracted from VAT Revision No. 10 of 2009 titled as "Patiala Auto Enterprises v. State of Punjab".

2. The compendium of the facts, culminating in the commencement, relevant for disposal of present petitions and emanating from the record, is that the petitioner-assessee was a registered dealer under the provisions of the Punjab General Sales Tax Act, 1948 (for short, "the Act"). It submitted its return for the assessment year 1990-91. The Assessing Authority passed the final order on May 31, 1993.

3. The revisional authority, in exercise of its power u/s 21 of the Act, had issued notice to the assessee, as to why the order of the Assessing Authority finalizing the assessment for the year 1990-91, be not revised. As nobody appeared on behalf of the assessee in spite of notice, therefore, the revisional authority revised the assessment order and remanded the case to the Assessing Authority for re-determination of tax liability, vide order dated May 20, 1998 (annexure P2).

4. Aggrieved by the order (annexure P2), the assessee filed the revision, which was dismissed by the Chairman, Value Added Tax, Punjab, vide order dated April 3, 2008 (annexure P6).

5. The assessee still did not feel satisfied with the impugned order (annexure P6) and filed the present revision petitions, which were admitted to consider the following substantial questions of law :

(a) Whether the learned Tribunal has erred in law in observing that the Ld. ETC has passed revisional order on May 20, 1998 despite the fact that it was not served for eight years upon the assessee nor the Assessing Authority has taken cognizance of that order for about four years, and therefore in view of judgment of the honourable Supreme Court in *State of Andhra Pradesh v. Khetmal Parekh* reported in [1994] 93 STC 406 (SC) that the presumption should have been that the order was not made on the date itself ?

(b) Whether, on the facts and circumstances of the case, the order of revision passed by learned revisional authority after the expiry of 3/ 5 years is void and consequently the order passed thereon is liable to be quashed ?

6. After hearing the learned counsel for the parties and after going through the record, we are of the considered view that there is no merit in the instant petitions.

7. The main argument of the learned counsel that since no notice was issued to the assessee, so, the order (annexure P2) passed by the revisional authority after more than five years is time-barred, illegal and not binding on it (assessee), is not only devoid of merit but misplaced as well.

8. It is not a matter of dispute that no period of limitation was prescribed for deciding/passing the order of assessment by the revisional authority, during the period of relevant assessment year. As is evident from the record that as the benefit u/s 5(2)(a)(ii) of the Act was wrongly given to the assessee, therefore, the revisional authority issued notice, which was served upon Sanjiv Kumar, accountant of the assessee. Despite service, since none appeared on behalf of the assessee, so, the revisional authority remanded the matter to the Assessing Authority for re-determination of tax liability, vide order (annexure P2).

9. Meaning thereby, the notice was duly served upon Sanjiv Kumar, accountant/ representative of the firm on May 6, 1998 within a period of five years from the date of passing the original assessment order. In that eventuality, it cannot possibly be said that the revisional authority passed the order without issuing the notice after five years of the original assessment order, as urged on behalf of the assessee. Thus, the contrary arguments of the learned counsel for the assessee deserve to be and are hereby repelled under the present set of circumstances. Therefore, it is held that there is no illegality in the impugned order of the revisional authority because notice was issued and Sanjiv Kumar, accountant of the assessee, was duly served on May 6, 1998, i.e., within five years of passing

the assessment order. Consequently, the questions of law are accordingly answered against the assessee and in favour of the Revenue.

10. This matter can be viewed from a different angle. After the remand of the case, the Assessing Authority re-determined the tax liability of the assessee, vide order dated February 26, 2004. Ultimately, the assessee filed the appeal bearing No. 417 of 2005-06 against the said order, which was accepted by the Tribunal, whereby the second assessment order dated February 26, 2004 was set aside to the extent that let the Assessing Authority give an opportunity to the assessee to satisfy the sales against ST-XXII forms, vide same impugned order dated April 3, 2008. Once the main order dated February 26, 2004, which was off-shoot of the order dated May 20, 1998 of remand passed by the revisional authority, has already been set aside, then the present revision petitions against the same become infructuous and no relief can be granted to the assessee, in this relevant connection.

11. In the light of aforesaid reasons and thus seen from any angle, as there is no merit, therefore, the instant revision petitions are hereby dismissed with no order as to costs.