(2006) 07 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Paul Motor Store APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11D

Citation : (2007) 10 VST 259

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. This petition has been filed for a direction to the Tribunal to refer following questions of law arising out of order of the Tribunal dated August 27, 1992 for the assessment year 1982-83:

(i) Whether, in the facts and circumstances of the case, Section 11D read with Section 10(4) could be attracted and levy of interest of Rs. 49,341 for the assessment year 1982-83 is sustainable in law?

(ii) Whether, in the facts and circumstances of the case, the decision of the Supreme Court in Associated Cement Co. Ltd. v. Commercial Tax Officer [1981] 48 STC 466 could be invoked?

(iii) Whether the proceedings for levy of interest initiated u/s 11D and resultant levy of interest of Rs. 19,341 are sustainable in law and are within jurisdiction?

2. The petitioner is a registered dealer under the provisions of the Punjab General Sales Tax Act, 1948 (for short "the Act") and was engaged in the business of tyres and tubes. As a result of assessment in respect of assessment year 1982-83, an additional demand of Rs. 293 on account of tax and Rs. 98 on account of interest u/s 11D of the Act was raised, which was paid. Thereafter, reassessment proceedings were initiated u/s 11A of the Act and vide reassessment order dated April 22,1988 an additional demand of tax to the tune of Rs. 62,000 and penalty of Rs. 13,000 was raised, which was paid by the assessee. In addition to this the Revenue also claimed interest u/s 11D of the Act

on the ground that the tax was held due on the date of filing of the return itself. The demand of interest was upheld by the Tribunal relying on a judgment of the honourable Supreme Court of India in Associated Cement Co. Ltd. v. Commercial Tax Officer [1981] 48 STC 466.

3. Learned Counsel for the assessee submits that the view taken in Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, stands overruled by a Constitution Bench of the honourable Supreme Court of India in J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422. Counsel further submits that where additional demand is created, as a result of assessment/ reassessment, the interest becomes payable from the date of demand and not from the date of return, as the assessee cannot anticipate that any amount in excess of the amount paid by the assessee as per the return filed will be liable to be paid. Similar view has been expressed in Trick India Limited v. State ofHaryana : AIR1994SC2410 , Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, and Full Bench of this Court in United Riceland Limited v. State of Haryana [1997] 104 STC 362.

4. Since, the facts of the case are not in dispute and the matter is covered by the law laid down by the honourable Supreme Court in J.K. Synthetics Ltd.''s case [1994] 94 STC 422 we treat the question proposed as having been referred to this court, to avoid unnecessary delay. Similar view was taken by a Division Bench of this Court in S.T.C. No. 19 of 1992, Chaudhary Tractor Company v. State of Haryana [2007] 8 VST 10 decided on May 29, 2006.

5. Accordingly, we answer the questions in favour of the assessee and against the Revenue and hold that liability to pay interest as a result of reassessment would arise from the date of demand and not from the date of return.

6. The petition is disposed of accordingly.