(2010) 09 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Ram Gopal Murli Dhar Juntra — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 26, 3, 64, 9
Haryana Value Added Tax Rules, 2003 — Rule 39A, 49

Citation : (2011) 44 VST 78

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of notification dated 8.6.2010, Annexure P-2, to the extent it enhances lump-sum rate of tax retrospectively.

2. The petitioner is a brick kiln owner and is engaged in manufacturing and selling of bricks. u/s 3 of the Haryana VAT Act, 2003 (for short, "the Act"), a dealer is liable to pay tax on sale of goods. u/s 9 of the Act, there is a provision for lump-sum payment linked with production capacity or any other measure which may be specified. Rule 49 of the Haryana VAT Rules, 2007 provides exercise of option by a brick kiln owner for payment of lump-sum amount in lieu of tax calculated with reference to turnover and a table appended thereto provides for fixation of lump-sum amount based on capacity of the brick kiln. The said rate is prescribed from time to time. As per notification in force prior to 8.6.2010, lower rate of lump-sum tax was laid down but from 8.6.2010, by impugned notification, the said rate was substituted by a higher rate for the period from 1.10.2009 to 30.9.2010. The notification is dated 8.6.2010 and is thus, made operative even for period of about eight months prior to its issuance.

3. Learned Counsel for the petitioner points out that there is no provision authorizing fixation of enhanced rate from a retrospective date, in absence of which the impugned notification to the extent of retrospectivity, is liable to be

quashed and the petitioner is liable to pay tax at the old rate for the said period. Reliance placed on DB judgment of this Court Ranbir Singh Ram Gopal v. State of Haryana and Anr. (2002) 125 STC 326, laying down:

7. On the merits of the case, we find substance in the plea of the petitioners that the amendment made in Rule 39-A of the Rules cannot be given retrospective effect. None of the provisions contained in the Act including Section 64 read with Section 26 empowers the State Government to frame or amend the Rules with retrospective effect. In the absence of such provision, the State Government which acts as a delegate of the Legislature cannot enact a rule with retrospective effect nor can it amend the existing Rules with retrospective effect. Legal proposition that the delegated/subordinate legislation cannot be enacted with retrospective effect in the absence of the power vesting in the rule-making authority in that behalf is well-settled. Therefore, the impugned notification cannot be sustained in so far as it seeks to levy enhanced lump-sum tax with retrospective effect, i.e., from October 1, 1992.

4. Inspite of opportunity having been granted to the State, no response has been received.

5. Since the matter is covered by earlier judgment of this Court, which is not shown to be distinguishable in any manner, this petition is allowed and the petitioner is held liable to pay tax for the period prior to 8.6.2010 as per the rate applicable prior to the issuance of notification dated 8.6.2010.