(2013) 02 P&H CK 0229

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 108 of 2012

Rathi Udyog Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 31, 36, 48

Citation : (2013) 199 ECR 479 : (2013) 60 VST 270

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Rajiv Agnihotri, for the Appellant; Mamta Singla Talwar, Additional Advocate-General, Haryana, for the Respondent

Judgement

Hemant Gupta, J.—The present appeal u/s 36 of the Haryana Value Added Tax Act 2003 (for short, "the Act") is directed against an order dated November 8, 2011, passed by the Haryana Tax Tribunal (for short, "the Tribunal") affirming an order passed by the Joint Excise and Taxation Commissioner (Appeal), Faridabad and that an order dated April 21, 2000, passed by the Excise and Taxation Officer-cum-Assessing Authority, Faridabad. The appellant has claimed following substantial questions of law in respect of assessment year 1995-96:

(i) Whether the notice issued u/s 31 is not illegal as notice in form ST-25 issued along with best judgment assessment notice as well as penalty notice without concluding suppression?

(ii) Whether best judgment assessment can be framed without there being any terms given in the notice and when that notice itself comprises of proposal for best judgment assessment?

(iii) Whether best judgment assessment can be framed in absence of any jurisdiction under the provision and moreover when there is use of specific words ''definite information'' related to ''turnover'' have been given?

(iv) Whether best judgment assessment can be framed in re-assessment proceedings when the turnover though not disclosed in returns but was part of balance sheet and books of accounts produced at the time of assessment?

(v) Whether the assessing authority is not required to issue fresh notice when against the earlier notice talks about suppression of Rs. 5,81,265 and in response the petitioner discloses a turnover of Rs. 31,41,663 voluntarily as the books of accounts were seized by Central excise authorities and bills issued from one bill book could not be made part of returns but are part of books of accounts and balance sheet?

(vi) Whether the judgment of honourable Supreme Court in case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, relied upon by the respondents against the petitioner-appellant is rather favours the petitioner-appellant along with judgment of the Punjab and Haryana High Court in case cited as Aggarwal Iron Store Vs. State of Punjab, ?

(vii) Whether charging of interest is not illegal in reassessment proceedings as there was no tax due according to returns and particularly when it is not discussed by any of the authorities below?

(viii) Whether the penalty imposed u/s 48 of the Act for suppression is not illegal when the turnover is not disclosed in the returns as books were seized by Central excise authorities but the turnover is part of the books of accounts and balance sheet which is part of original assessment record?

(ix) Whether penalty can be levied on assumed turnover in best judgment assessment or it is leviable for the period of alleged period and not beyond it for future period in view of Parvathi Bhavan Sweets Vs. State of Tamil Nadu,

2. Initially, the Assessing Authority finalized the assessment u/s 28(3) of the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") on April 16, 1998. Subsequently, a show-cause notice was served upon the petitioner on March 23, 2000 after it was discovered that the turnover of the assessee has escaped assessment during the year in question as the appellant has made unaccounted sales of iron and steel to M/s. Khandelwal Steel, Gurgaon. In the show-cause notice, it was stated that the appellant has suppressed sales amounting to Rs. 1,39,727 on an average per day and as to why an addition of sales worth Rs. 4,37,34,602 be not added to the gross turnover. The appellant filed its reply admitting that the sales worth Rs. 31,41,663 exclusive of tax could not be reflected in the returns due to bona fide omission of their clerk for the period May 1, 1995 to May 30, 1995.

3. The Assessing Authority vide order dated April 21, 2000 found that iron and steel received from Shahdara branch from May 1, 1995 to May 30, 1995 involving weight of 222.7 tons approximately and sales worth Rs. 31,41,663 has been concealed from the Assessing Authority. It was found that assessee-firm has suppressed considerable turnover during one month only and deserves to be

assessed to tax to the best of the judgment at Rs. 2,41,666 per day. However, as the GTO was proposed at Rs. 1,39,727 per day after excluding Sundays during the year, therefore, the said amount was ordered to be added to the gross turnover of the assessee. The said finding has been affirmed in appeal by the Joint Excise and Taxation Commissioner (Appeal), Faridabad and further by the Tribunal.

4. The learned counsel for the appellant has vehemently argued that the best judgment assessment could be resorted to only after the rejection of books of accounts that too during the course of assessment proceedings. The assessing officer while issuing show-cause notice has quantified the daily turnover for addition to the gross turnover without returning a finding that account books produced by the appellant are to be rejected. It is only after recording a finding and that too after giving an opportunity of hearing to the appellant, the account books could be rejected by the Assessing Authority and could proceed to frame best judgment assessment. Since no such procedure was adopted, therefore, the order passed under the Act are not sustainable. It is also argued that the Assessing Authority has made addition at the rate specified for the entire financial year, though there was discrepancies in the account books in the month of May 1995 only.

5. We have heard learned counsel for the parties at length and find no merit in the present appeal. After framing of the assessment, the information came to the notice of the Assessing Authority that the appellant has not reflected certain sales in the return submitted by it. The Assessing Authority found that not only the appellant has purchased iron and steel from different dealers, which are not reflected in the accounts, but also the sales were also not reflected. Therefore, the Assessing Authority proceeded to frame the best judgment assessment. Once the sales are proved to be outside the said books of accounts, a fact not disputed by the appellant, the rejection of the books of accounts is necessary consequence. The Assessing Authority was able to find out the undisclosed sales in the account books for one month but such could be practice in the other months of the year as well. It cannot be said that the assessee has made purchases and sales outside the books of account only for the one month. Consequently, we do not find that any substantial question of law arises for consideration in the present appeal. Dismissed.

