(2010) 04 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Shubh Timb Steels Limited APPELLANT

Vs

The State of Punjab RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:
Constitution of India, 1950 — Article 301, 304
Punjab General Sales Tax Act, 1948 — Section 11, 14, 22, 23, 4B
Punjab Value Added Tax Act, 2005 — Section 26, 27

Citation : (2010) 31 VST 85

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

Bench : Division Bench

Judgement

Mehinder Singh Sullar, J.—As common questions of law and facts are involved in all the above mentioned reference petitions, therefore, we propose to decide the same by this single 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 GSTR No. 1 of 2005 titled as "Shubh Timb Steels Limited v. The State of Punjab".

2. The compendium of the facts, culminating in the commencement of, relevant for disposal of these reference petitions filed by the petitioner-assessees M/s. Shubh Timb Steels Ltd. and M/s. A.B. Tools Ltd. (for brevity "the assessees") and emanating from the records, is that the assessees were engaged in the business of iron and steel and were registered under the Punjab General Sales Tax Act, 1948 (for short "the Act").They filed all the returns including the returns for the assessment years 1987-88, 1988-89 and 1989-90 within a stipulated period. The matter for the assessment year 1987-88 was remanded by the Deputy Excise and Taxation Commissioner (Appeals). In the wake of remand, the Assessing Authority created an additional demand in respect to the assessment year 1987-88, vide order dated 30.1.1996. Sequelly, an additional demand was also created with regard to the assessment year 1988-89 vide order dated 29.9.1997 and assessment year 1989-90, vide order dated 22.12.1997. Feeling aggrieved with these orders, the appeals filed by the assessees were dismissed by the

Deputy Excise & Taxation Commissioner (Appeals), vide orders dated 28.10.1997, 21.4.1998 and 26.3.1998 respectively.

3. Aggrieved by these orders, the assessees filed the appeals before the Sales Tax Tribunal, Punjab, which were partly accepted, vide order dated 15.5.2000, the operative part of which, is reproduced as under:

I conclude that there is no infirmity in the impugned orders, in so far as the question of liability of tax is concerned. However, with regard to the question of penalty and interest, I feel that there is considerable merit in the arguments on behalf of the appellant, which have not been convincingly refuted. In view of this, the appeals partly succeed, to the extent that the penalty and interest are waived. However, penalty imposed u/s 23 shall remain intact, as the appellant''s counsel did not press for its waiver.

4. Thereafter, the assessees filed petitions u/s 22 of the Act, which were dismissed by the Sales Tax Tribunal, vide order dated 24.12.2001. The assessees filed petitions u/s 22(2) of the Act in this Court. In pursuance of the order dated 16.7.2004 of this Court, the Tribunal referred the following question of law for opinion, vide order dated 15.9.2004:

Whether on the facts and in the circumstances of the case, the order of assessment dated 19.4.1995 is beyond limitation?

5. Still aggrieved by the order dated 16.7.2004 of this Court, the assessees filed the appeals in the Hon''ble Supreme Court. In the wake of order dated 17.11.2006 of Hon''ble Apex Court, the Tribunal has again referred the following questions of law for adjudication by this Court:

(i) Whether on the facts and in the circumstances of the case, the dealer is liable to pay tax u/s 4B of the Punjab General Sales Tax Act, 1948 on the purchase of goods made in Punjab State, which have been used in manufacturing of taxable goods and ultimately

sold in Punjab State or on inter-State sale basis, even if some manufacturing process of these goods has taken place outside the State of Punjab?

(ii) Whether the word "send" used in Clause (ii) of Section 4B of Punjab General Sales Tax Act, 1948 includes the goods sent for manufacturing outside the State of Punjab although, ultimately goods are received back in Punjab State and sold as such there (Punjab State)?

(iii) Whether in the facts and the circumstances of the case, the assessment (original as well as assessment on remanded case) of the dealer framed by the Assessing Authority is assessment u/s 11(4) of the Punjab General Sales Tax Act, 1948 and therefore time barred having been completed beyond the period of five years prescribed under the said sub-section?

(iv) Whether the Assessing Authority is justified to frame assessment of the dealer on the transaction liable to purchase tax, being time barred u/s 11(5) of the Act ibid and therefore beyond jurisdiction, when no return of purchase tax was ever filed by the dealer?

(v) Whether on the peculiar facts and circumstances of the case, the levy of purchase tax u/s 4B of the Punjab General Sales Tax Act, 1948 is against the general scheme of the Act to levy tax on goods at one stage and therefore liable to be quashed? Whether any such levy of tax will be violative of Articles 301 and 304 of the Constitution of India?

That is how, we are seized of the matter.

6. At the very outset, learned Counsel for the assessees submitted that as the decision of question Nos. (i)(ii)(iv) and (v) would depend upon the determination of question No. (iii), therefore, he urged that question No. (iii) be accordingly decided first. This factual position is acknowledged by the learned State counsel. Therefore, we propose to decide question No. (iii) at the first instance.

7. In this regard, learned Counsel for the assessees has argued that although no period of limitation was prescribed for deciding/passing the order of assessment, during the period of relevant assessment years, but he argued that in the absence of any prescribed period of limitation, the Assessing Authority ought to have passed the assessment orders within a reasonable period of three years. In all, according to the learned Counsel for the assessees that since all the impugned assessment orders were passed by the Assessing Authority beyond the period of seven years, so, the same are illegal, void and without jurisdiction. In support of his contention, he has placed reliance on the judgments of Hon''ble Supreme Court in cases State of Punjab and Ors. v. Bhatinda District Co-op. Milk P. Union Ltd. (2007) 30 PHT 474 (SC); Madan Lal Arora v. Excise and Taxation Officer (1961) 12 STC 387 and the judgments of this Court in cases GSTR No. 36 of 2006 titled as "Hotel Skylark and Restaurant Pvt. Ltd. v. State of Punjab and Ors." decided on 19.1.2010; Tara Chand Sham Lal, New Grain Market, Sangrur v. State of Punjab and Ors. (2010) 35 PHT 143 (P & H) and Hardit Singh Bhagat Singh v. The Excise and Taxation Officer, Assessing Authority, Ludhiana [1982] 049 STC 56 (P & H).

8. On the contrary, the learned State counsel has submitted that since no period of limitation for passing the assessment order was prescribed at the relevant period, so, the impugned assessment orders even passed beyond the period of seven years are legal and justified.

9. We have heard the learned Counsel for the parties and have gone through the records with their valuable help.

10. It is not a matter of dispute that no period of limitation was prescribed for passing the assessment order, during the period of relevant assessment years, but now the period of limitation of 3 years in this respect has been prescribed with effect from 20.4.1998 u/s 11 of the Act. As indicated earlier, the Assessing Authority passed the impugned assessment orders beyond the period of more

than seven years in the relevant assessment years. Thus, it would be seen that the facts of this case are neither intricate nor much disputed.

11. Above being the position on record, now the sole question, that arises for determination, is whether the impugned assessment orders passed by the Assessing Authority beyond the period of five years are legal or not?

12. An identical question arose for determination before the Hon''ble Apex Court in Bhatinda District Co-op. Milk P. Union Ltd.''s case (supra), wherein it was ruled that "if no period of limitation has been prescribed, then the statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors and such jurisdiction should ordinarily be exercised within a period of three years and in any event, the same should not exceed the period of five years."

13. Again, relying upon the judgment of Hon''ble Supreme Court in Bhatinda District Co-op. Milk P.Union Ltd.''s case (supra), this Court in Tara Chand Sham Lal''s case (supra) ruled in para Nos. 9 and 10 as under:

9. The question of limitation is a jurisdictional question and goes to the root of the whole matter. Therefore, we are of the view that the assessment could not have been framed after a lapse of three years. The fixation of period of three years would be advisable because even under the provisions of Section 11(1), (2) and (3) of the Punjab General Sales Tax Act, 1948 the period for framing assessment is three years. Likewise, under Sections 26 and 27 of the Punjab Value Added Tax Act read with Rule 36 of the VAT Rules, the return is required to be filed by every taxable person quarterly within a period of 30 days from the date of expiry of each quarter. The period under the VAT Act is far shorter than the one prescribed under Sales Tax Act. We are further of the view that the sale and purchase of agricultural produce is a seasonal business which is heavily transacted during the Kharif and Rabi season of a year. Therefore, maximum period for assessment of market fee could reasonably be fixed at three years.

10. When the facts of the present case are examined in the light of the aforesaid transaction, it emerges that period of three years had expired either in 1999 or the maximum in the year 2000. Therefore, no assessment could have been framed on 26.11.2001 (P.3). Moreover, the assessment has been framed on vague and incomplete facts. It does not mention the date of transaction but it merely mentions the year 1996-97. Therefore, the writ petition deserves to be allowed on this ground also. In all other connected petitions also, the order of assessment would be time barred as it has been passed after a period of more than four nay five years.

14. Sequelly, in Madan Lal Arora''s case (supra), it was held by the Hon''ble Supreme Court that "the power to make the best judgment assessment could be exercised only within the period of three years mentioned in the sub-section and the three years had to be counted from the end of each quarter in respect of

which the returns had been filed." Reliance in this respect can also be placed upon M/s. Hotel Skylark and Restaurant Pvt. Ltd. and Hardit Singh Bhagat Singh''s cases (supra), in which the same view was reiterated.

15. Moreover, Section 11 of the Act postulates that "if the Assessing Authority is satisfied that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period and if the Assessing Authority is not satisfied with the returns, then he shall serve on such dealer a notice in the prescribed manner and on the date specified in the notice, the Assessing Authority shall, after hearing such evidence as the dealer may produce and such other evidence as the Assessing Authority may require on specified points, pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period." Not only that, proviso to Section 14 of the Act further posits that "the Commissioner or any person cannot direct the assessee to produce books, documents and the accounts of a period more than five years prior to the year in which assessment is made.

16. Meaning thereby, a co-joint reading of these provisions coupled with legal proposition would reveal that the Assessing Authority has to pass an assessment order within a period of three years and no authority can direct the assessee to produce the books/accounts after the expiry of period of five years. In that eventuality, in any case, no assessment order can be passed after the expiry of period of five years. Therefore, in our view, in the absence of prescribed period of limitation at the relevant time, the Assessing Authority ought to have passed the assessment orders within a reasonable period of three years and in any event, not beyond the period of five years.

17. As is evident from the record, since all the assessment orders were passed by the Assessing Authority after the expiry of period of five years, therefore, the same are illegal and cannot be maintained. The contrary arguments on behalf of the learned State counsel "stricto sensu" deserve to be and are hereby repelled as the law laid down in the aforesaid judgments "mutatis-mutandis" applicable and is the complete answer to the problem in hand.

18. No other point, worth consideration, has been pointed out by the learned Counsel for the parties.

19. In the light of the aforesaid reasons, it is held that the impugned assessment orders passed after the expiry of the period of five years are time barred and cannot legally be enforced, in the obtaining circumstances of the case. Therefore, question No. (iii) is answered in favour of the assessees and against the revenue. In view of the decision of and the answer to question No. (iii) in favour of the assessees, the remaining questions do not survive for adjudication by this Court in this relevant connection.

20. For the reasons recorded above, all these reference petitions are accordingly

accepted and decided in favour of the assessees.

