(2015) 04 GUJ CK 0072

In the Gujarat High Court

Case No : Tax Appeal No. 225 of 2015, Civil Application (OJ) No. 294 of 2015 in Tax Appeal Nos. 225, 226 of 2015, Civil Application (OJ) No. 295 of 2015 in Tax Appeal No. 226 of 2015 and Tax Appeal No. 227 of 2015, Civil Application (OJ) No. 296 of 2015 in Tax Appe

State of Gujarat APPELLANT

Vs

T.J. Agro Fertilizers Pvt. Ltd. RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 41, 41B, 44, 45(6), 47(4)(a)

Citation : (2015) 04 GUJ CK 0072

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Chintan Dave, A.G.P., for the Appellant; Uchit Sheth, Advocates for the Respondent

Judgement

M.R. Shah, J.

1. As common question of law and facts arises in this group of appeals, they are disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad passed in Second Appeal No. 529, 530 of 2000 with Second Appeal No. 1052 of 2002 by which, the learned Tribunal has partly allowed the said appeals by modifying the interest charged under Section 47(4)(a) of the Gujarat Sales Tax Act by holding that for the period between payment of tax on ad-hoc basis till the order of assessment, the interest is not leviable, the appellant-State of Gujarat - Revenue has preferred the present tax appeals with the following proposed substantial questions of law:-

"(1) Whether the Hon''ble Tribunal is right in law in holding that interest under Section 47(4A) of the Act is not leviable till the date of assessment order?

(2) Whether the Hon''ble Tribunal is right in law in deleting penalty levied under Section 45(6) of the Act?"

3. Today, when the present tax appeals are taken up for hearing, it is brought to our notice that the identical question came to be considered by the Division Bench of this Court in OJCA No. 224 of 2015 in Stamp No. 605 of 2015 with Stamp No. 606 of 2015 arising out of the judgment and order passed by the learned Tribunal in Second Appeal No. 60 of 2010 by which, the learned Tribunal reduced the interest liability to the extent as observed hereinabove i.e. deleted the interest levied between period of amount of tax paid on ad-hoc basis and order of assessment and the Division Bench of this Court has confirmed the said judgment and order.

4. For the reasons stated in the said order and even otherwise, considering the provisions of Section 47(4)(a), it cannot be said that the learned Tribunal has committed any error in deleting the interest levied for the period between the payment of tax on ad-hoc basis till the order of assessment. The provisions of Section 47(4)(a) read as under:-

"Section 47(4)(a) The amount of tax:-

(i) due where declarations or returns have been furnished without full payment therefor, or

(ii) assessed or reassessed for any period under section 41 or section 44 less any sum already paid by the dealer in respect of such period, or assessed under section 50).

(iii) provisionally assessed for any period under section 41B less any sum already paid by the dealer in respect of such period."

4.1. Considering the aforesaid provisions and even otherwise considering the fact that once the dealer has made payment before the actual order of assessment, may be on ad-hoc basis, meaning thereby, the amount of tax due and payable as per the assessment order, already paid prior to the assessment order and the State/Department received the said amount of tax, there cannot be any interest levied during the aforesaid period. It cannot be disputed that levy of interest would be on delayed payment of tax due and payable. It is not the case that on finalization of the assessment, any amount more than the amount paid on ad-hoc basis, was assessed and/or required to be paid by the assessee.

5. Under the circumstances, we are in complete agreement with the view taken by the learned Tribunal insofar as deleting the levy of interest in the interregnum period i.e. for the period between payment of tax on ad-hoc basis till the order of assessment is passed and consequently, deleting penalty under Section 45(6) of the Act.

6. No substantial question of law arises in this group of appeals. Under the circumstances, all these appeals deserve to be dismissed and accordingly

dismissed.

7. In view of dismissal of the appeals, OJCAs in the respective appeals stand disposed of.

