

(2000) 03 SC CK 0158

In the Supreme Court Of India

Case No : Civil Appeal No. 3994 of 1999

State of Haryana and Others

APPELLANT

Vs

Alfa Surgical (P) Ltd.

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Haryana General Sales Tax Act, 1973 — Section 40

Citation : (2000) 8 JT 483 : (2000) 9 SCC 301 : (2001) 124 STC 417

Hon'ble Judges : Shivaraj V. Patil, J; R. P. Sethi, J; G. B. Pattanaik, J

Bench : Full Bench

Final Decision : Allowed

Judgement

G.B. Pattanaik, J.—The State of Haryana and Others are in appeal against the order of Punjab and Haryana High Court whereunder a notice issued by the revisional authority in exercise of power u/s 40 of the Haryana General Sales Tax Act, 1973 read with Section 9(2) of the Central Sales Tax, 1956 has been set aside on the ground that the revisional authority could not have issued the notice in question since the notice is in fact based on a judgment of the Court holding that the surgical cotton could not have been assessed at the rate of 4% which is prescribed for ordinary cotton and on the other hand should have been assessed at the rate of 8%. In support of this conclusion, the High Court has relied upon an earlier decision of the said court. Mr. Mahabir Singh appearing for the appellants contends that a notice issued could be interfered with by the High Court only if the authority issuing the notice lacks inherent jurisdiction or the condition-precedent for issuing of such notice are not indicated in the notice itself. Judged from this angle, the learned Counsel contends if the notice that was issued on 17.11.1997 is examined, it cannot be said that there was either any inherent lack of jurisdiction or that the condition-precedent had not been satisfied, and therefore, the High Court committed serious error in interfering with the notice that was issued. Mr. Dholakia, the learned Counsel appearing for the respondent, on the other hand, contended that the High Court was fully

justified, even at this stage to quash the notice in question inasmuch as the authorities merely wanted to reassess the assessee for which appropriate provision is there under the Statute, and therefore, the revisional power could not have been exercised. He further contended that on the basis of law as it stood on the date of assessment, the order of assessment was perfectly valid and since the authorities have issued the notice because of a change of law with regard to the assessment of the surgical cotton, the jurisdiction of the revisional authority could not have been exercised. The correctness of the rival submission depends upon an interpretation of Section 40 of the Act. Section 40 reads as follows:

Revision -(1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by any officer appointed under Sub-section (1) of Section 3 of the Act to assist him or any assessing authority or appellate authority other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit.

2. On a plain reading of the aforesaid Section, we do not find any fetter on the powers of the revisional authority to issue notice and call for the records of any case whether pending or disposed of by any assessing authority or appellate authority for the purposes of satisfying himself as to the legality or propriety of any order made therein. The power conferred on the revisional authority is wide enough to include a case where the revisional authority feels that the assessing authority committed error in assessing the sale of surgical cotton at 4% though in law it ought to have been assessed at 8%. On the plain language of the aforesaid Section and on examining the impugned notice, we are not in a position to come to the conclusion that either the revisional authority lacked jurisdiction in issuing the notice in question nor can it be said that the necessary ingredients for exercising that power, as conferred by the Statute have not been specified. In this view of the matter, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the notice issued by the revisional authority. We, therefore, quash the aforesaid order of the High Court and direct that the revisional authority shall proceed with the matter in accordance with law. Since the assessee has not shown cause and the time has already expired as per the notice, we allow 3 weeks from today to the assessee to file the show-cause before the revisional authority whereafter the revisional authority shall proceed with the matter. The appeal is allowed.