(1995) 11 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 40 of 1985

State of Haryana — APPELLANT

Vs

Dasaunda Singh Waryam Singh — RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 40(1), 42

Citation : (1996) 113 PLR 110

Hon'ble Judges : N.K. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : S.S. Khetarpal, A.G, for the Appellant; M.L. Sarin and Vikas Suri, for the Respondent

Judgement

Ashok Bhan, J.—Sales Tax Tribunal, Haryana, (hereinafter referred to as ''the Tribunal'') has referred the following question of law, arising out of the order of the Tribunal, for opinion of this Court :-

"Whether in the facts and circumstances of the case the Deputy Excise and Taxation Commissioner, Ambala, exercising the revisional authority u/s 40 of the HGST Act was within his powers to direct the Assessing Authority to initiate penal proceedings against the respondents u/s 10(7) of the Punjab General Sales Tax Act, ?"

2. The above question arises out of the following facts.

M/s Basaunda Singh Waryam Singh assessee (hereinafter referred to as ''the assessee'') filed four quarterly returns for the assessment year 1970-71. under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as ''the Punjab Act'') showing the total turnover of Rs. 1,28,307.62. It was detected that with the Department of Income Tax, assessee had shown the total turnover of his business at Rs. 4,98,515.46. When confronted with this situation, assessee filed a revised statement of accounts disclosing his gross turnover at Rs. 4,98,515.46 as against the return figure of Rs. 1,28,307.62. Taking the gross receipt at Rs.

4,98,515.46, the Assessing Authority framed the assessment. Demand Notice and Challan for Rs. 5,168.82 plus Rs. 10/- on account of penalty for late filing of the return was imposed u/s 10(6) of the Punjab Act, No penalty proceedings u/s 10(7) of the Punjab Act for filing incorrect return were initiated. Assessment order was passed on 31.12.1973. Appeal filed by the assessee against the order of assessment was dismissed on 18.4.1974.

3. In the meantime, Haryana General Sales Tax Act, 1973 (hereinafter referred to as ''the Haryana Act'') came into force. Revisional Authority, in exercise of its powers under record of the proceedings of the assessment order dated 31.12.1973 passed by the Assessing Authority for the purposes of satisfying itself as to the legality and propriety of the order regarding non imposition of penalty u/s 10(7) of the Punjab Act. Section 10(7) of the Punjab Act corresponds to Section 48 of the Haryana Act. Assessee appeared before the Revisional Authority and pleaded that the assessment proceedings and the penalty proceedings are two distinct proceedings and since the Assessing Authority had not initiated the proceedings for imposition of penalty, the Revisional Authority could not issue notice u/s 40 sub-clause (2) of the Haryana Act, for examining the legality and propriety of any proceedings or the orders passed therein. This plea of the assessee was not accepted. Revisional Authority held that the orders passed by the Assessing Authority suffered from impropriety inasmuch as the penalty u/s 10(7) of the Punjab Act has not been imposed. Case was remanded to the Assessing Authority with a direction to initiate proceedings u/s 10(7) of the Punjab Act and finalise the same on merits.

4. Assessee, being aggrieved against the order of the Revisional Authority, filed an appeal before the Tribunal. Tribunal accepted the. appeal filed by the assessee and held that the Revisional Authority could not travel beyond the proceedings of the Assessing Authority. Since, the penalty proceedings had not been initiated by the Assessing Authority, Revisional Authority did not have the jurisdiction to invoke suo moto powers and take action and go into the legality and propriety of the proceedings of the orders made therein. Revenue filed an application u/s 42(1) of the Haryana Act, for making a reference on the question of law referred to in the earlier part of the judgment, for opinion to this Court. On the said application, the Tribunal referred the aforesaid question of law.

5. As against this, the case of the Revenue is that the Revisional Authority could go into the question regarding imposition of penalty as the penalty proceedings emanate from the assessment proceedings.

6. Counsel for the parties have been heard.

7. Section 40 sub-clause (1) of the Haryana Act, reads as under :-

"40. Revision.--(1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by, any assessing authority or appellate authority, other than the Tribunal; for the proposes 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.

Provided that no order, shall be so revised after the expiry of a period of eight years from the date of the order :

Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any Court of law. Provided further that the assesses, or any other person shall have no right to invoke the revisional powers under this sub-section."

8. A close scrutiny of Section 40(1) would show that the Revisional Authority can call for the record of any case pending or disposed of for the purposes of satisfying himself as to the legality or to the propriety of any proceedings or of any order made therein and may thereafter proceed to pass such order in relation thereto as he deems fit. The case of the assessee is that the assessment of proceedings and the penalty proceedings are two independent and distinct proceedings and since the Assessing Authority did not initiate the proceedings for imposing the penalty, the Revisional Authority could not proceed either to levy the penalty for the first time or remand the case to the Assessing Authority for imposition of penalty.

9. At the time of making the assessment, Authority did not invoke its jurisdiction u/s 10(7) of the Punjab Act for levying the penalty for filing a false and incorrect return. As the Assessing Authority did not invoke its jurisdiction u/s 10(7) of the Punjab Act for levying the penalty, thee Revisional Authority had no jurisdiction to invoke the revisional powers u/s 40 and j remand the case to the Assessing Authority with a direction to redecide the matter: Revisional Authority could interfere in exercise of its revisional powers to examine the legality and propriety of the proceedings or the order passed therein only if the Assessing Authority had initiated penalty proceedings. Where no penalty proceedings have been initiated, the question of examining its legality or propriety does not arise.

10. The view we have expressed is strengthened by the reasoning recorded by the Madras High Court in Deputy Commissioner of Commercial Taxes, Madurai Division Vs. K.M. Thomas and Co., where under some what similar circumstances, where the Assessing Authority did not either expressly or impliedly invoke its power for levying penalty, it was held that the Revisional Authority had no power to independently invoke the power u/s 12(3) of the Tamil Nadu General Sales Tax Act (1 of 1959) and seek to levy penalty. It was held as under :-

"Where the assessing authority making a best judgment assessment u/s 12(2) of the Tamil Nadu General Sales Tax Act, 1959, did not pass an order levying penalty u/s 12(3) and also did not propose to invoke that power even in the pre-assessment notice, the Deputy Commissioner, in exercise of his power of revision u/s 32, could not independently invoke that power u/s 12(3) and seek to levy penalty."

11. Gujarat High Court has also taken the same view in a case reported in Bhavnagar Chemical Works (1946) Ltd. v. Commissioner of Sales Tax, Ahmedabad (1991) 83 STC 409, GUJ and held as under:-

"Penally proceedings are independent and distinct from assessment proceedings. If the original authority has expressly or impliedly not at all exercised its penalty jurisdiction, the Revisional authority cannot proceed to levy penalty for the first time. But where the assessing authority has omitted to impose penalty despite initiation of penalty proceedings, the order failing to impose penalty can be revised."

12. For the reasons stated above, the question referred to us is answered in the negative i.e. in favour of the assessee and against the Revenue and it is held that the Revisional Authority had no jurisdiction to invoke suo-moto powers for imposition of penalty when the Assessing Authority did not invoke its powers to impose the penalty inspite of submission of incorrect and false return.

