(2013) 01 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 33 of 2012 (O and M)

State of Haryana APPELLANT

Vs

New India Constructions Co. and Another RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 34

Citation : (2013) 60 VST 347

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

Bench : Division Bench

Advocate : Nitin Kaushal, A.A.G., Haryana, for the Appellant; Avneesh Jhingan, for the Respondent

Judgement

Hemant Gupta, J.

C.M. No. 7253-CII of 2012

1. For the reasons mentioned in the application, the same is allowed and delay of 33 days in filing the appeal is condoned.

C.M. No. 1856-CII of 2013

Application is allowed.

2. Amended substantial questions of law are taken on record.

VATAP No. 33 of 2012

3. The challenge in the present appeal u/s 34 of the Haryana Value Added Tax Act, 2003 (for short, "the Act") is to an order passed by the Haryana Tax Tribunal on April 20, 2011 whereby the order invoking revisional jurisdiction by the Deputy Excise and Taxation Commissioner was set aside.

4. The original assessment was finalized by the Assessing Officer refunding an amount of Rs. 14,05,331 on March 30, 2010. Such order was challenged by the assessee-respondent before the Joint Excise and Taxation Commissioner

(Appeals). The appeal filed by the assessee was accepted and the matter was remanded back to the Assessing Officer as it was found that denial of deduction on petroleum products from the turnover/receipts was not sustainable. Subsequent to the remand, the Assessing Officer allowed the refund of deduction on account of sale of petroleum products from the turnover/receipts.

5. However, the said order was revised by revisional authority, i.e., Deputy Excise and Taxation Commissioner on August 24, 2011. In further appeal on behalf of the assessee, the Tribunal accepted the appeal, inter alia, for the reason that the Deputy Excise and Taxation Commissioner, i.e., the Revisional Authority is junior in rank to the appellate authority, i.e., Joint Excise and Taxation Commissioner and therefore, is not competent to invoke revisional jurisdiction when order was passed by the appellate authority relying upon the judgment of the honourable Supreme Court in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others,

6. The learned counsel for the appellant has vehemently argued that the Assessing Authority has passed an order on remand, which is an order of assessment. In respect of such an order of assessment, the provisions of the Act in respect of appeal and/or revision are applicable de hors the fact that at an earlier stage, the appeal was accepted by the Joint Excise and Taxation Commissioner. The Deputy Excise and Taxation Commissioner is the competent revisional authority and thus could invoke the revisional jurisdiction in terms of section 34 of the Act. Such invocation of jurisdiction cannot be set aside only for the reason that at an earlier stage, the appeal was decided by a senior officer.

7. We have heard learned counsel for the parties and find that the following substantial question of law arises for consideration by this court:

Whether, in the facts and circumstances of this case, the order of the Haryana Tax Tribunal holding the exercise of revisional jurisdiction by the Deputy Excise and Taxation Commissioner as illegal is sustainable?

8. Though the appellate authority, at one stage, relied upon a judgment of the honourable Supreme Court in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others,), to remand the matter to consider the admissibility of deduction on account of petroleum products but the order passed thereafter by the Assessing Officer is an independent order. In respect of such an order, the revisional authority could exercise jurisdiction as exercised in the present case vide order dated August 24, 2011. There is no bar in section 34 of the Act in respect of the exercise of the revisional jurisdiction of the Deputy Excise and Taxation Commissioner. The order passed at an earlier stage in appeal is not a ground to restrict the right of the revisional authority to revise an order passed by the Assessing Authority on legally permissible grounds. Thus the order passed by the Tribunal setting aside such an order of the revisional authority is not justified. The question of law framed is thus answered in favour of the Revenue. Consequently, we allow the present appeal and set aside the order dated

November 11, 2011 passed by the Haryana Tax Tribunal and remit the matter to the Tribunal for fresh decision on the merits in accordance with law.