(2011) 04 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 25 of 2011

State of Punjab and Another	APPELLANT
Vs	
Anapurna Impex Pvt. Ltd.	RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11, 11(10), 11(3), 11(5)
Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2011) 46 VST 549

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Amol Rattan Singh, A.A.G., Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been filed u/s 68(2) of the Punjab Value Added Tax Act, 2005 against the order dated July 22,

2010, annexure P5 passed by the VAT Tribunal proposing following substantial questions of law:

(i) Whether the order passed by learned Tribunal is sustainable in law?

(ii) Whether the order passed by the Tribunal by relying upon judgment of this honourable High Court in the case of Shreyans Industries Limited

Vs. State of Punjab and Others, , which has already been challenged before honourable apex court is sustainable in law?

(iii) Whether the Tribunal has rightly allowed the appeal of the respondent when the Commissioner had exercised the power in accordance with

section 11(10) of the Act, 1948 before the expiry of the period of limitation as the returns were filed on April 5, 2005?

(iv) Whether the provisions of section 11(3) is directory in nature especially when the Legislature has empowered the Commissioner to extend the

period of limitation by exercising power u/s 11(10) of the Act, 1948?

(v) Whether the Tribunal should not have entertained the appeal without deposit of 25 percent of the amount of additional demand Emerald

International Ltd. Vs. State of Punjab and Others, reported as Emerald International Ltd. Vs. State of Punjab and Others,

(vi) Whether the Tribunal had jurisdiction to set aside assessment order itself when issue before it was only with regard to the deposit of 25 percent

of the additional demand?

The assessment under the provisions of the Punjab General Sales Tax Act, 1948, for the assessment year 2003-04 in respect of the assessee

became time-barred u/s 11 of the Act. Though extension of time was granted, it was after the expiry of the statutory period. The assessee

challenged the same and the Tribunal has set aside the assessment with the following observations:

As per section 11(5) of the Punjab General Sales Tax Act, 1948 even if the dealer does not furnish returns in respect of any period by the last date

prescribed, the Assessing Authority has to frame the assessment within the period of three years from the last date prescribed for furnishing the last

return in respect of such period and pass an order of assessment to the best of his judgment.

In view of the provisions of section 11(5) of the Act, the assessment had still to be framed within the period of three years from the last date for

filing the return, i.e., March 30, 2004 and should have been completed by April 30, 2007, even if the return was not filed.

Order dated December 5, 2007 of the Commissioner exercising powers u/s 11(10) of the Punjab General Sales Tax Act, 1948 extending the

period of limitation for framing assessment in case of the appellant for the assessment year 2003-04 had separately been set aside vide Tribunal

order dated October 23, 2008 in Appeal (VAT) No. 91 of 2008-09. Under these circumstances, the assessment framed on April 15, 2008 being

beyond the prescribed period of limitation is not in accordance with law and is liable to be set aside.

2. We have heard learned counsel for the appellant.

3. It is not disputed that the view taken by the Tribunal is consistent with the

view expressed by this court in Shreyans Industries Limited Vs. State

of Punjab and Others, Since the view taken by the Tribunal is consistent with the view taken by this court in Shreyans Industries Limited Vs. State

of Punjab and Others, , no substantial question of law arises. The appeal is dismissed.