(2012) 07 P&H CK 0215

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 20689-CII of 2011 and 4451-52-CII of 2012 and VATAP No. 60 of 2011

State of Punjab and Another — APPELLANT

Vs

Des Raj Bhim Sain — RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 29, 29(4), 68(2)

Citation : (2013) 58 VST 395

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Gaurav Garg Dhuriwala, Deputy A.G., Punjab, for the Appellant; K.L. Goyal with Sandeep Goyal, for the Respondent

Judgement

Ajay Kumar Mittal, J.

C.M. No. 20689-CII of 2011

1. Allowed as prayed for.

C.M. No. 4451-CII of 2012

This is an application under order 6, rule 17 of the CPC for amendment/ correction of the list of events and dates.

The application is allowed subject to all just exceptions.

C.M. No. 4452-CII of 2012

2. Application is allowed as prayed for. Documents are taken on record subject to all just exceptions.

VATAP No. 60 of 2011

3. The State of Punjab has filed this appeal u/s 68(2) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated May 20, 2011

(annexure A5) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:

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

(ii) Whether the order passed by the Tribunal by relying upon judgment of this honourable court in the case of M/s. Shreyans Industries Ltd. which has already been challenged before the honourable apex court, and the ratio of which is not applicable to the facts of this case 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 29(4) of the Punjab Value Added Tax Act, 2005, before the expiry of the period of limitation as the annual statement was filed on November 17, 2006 in the present case and three years were to expire on November 16, 2009?

(iv) Whether the provision of section 29(4) is directory in nature especially when the Legislature has empowered the Commissioner to extend the period of limitation by exercising powers u/s 29(4) of the Punjab Value Added Tax Act, 2005?

4. Put shortly, the facts necessary for the disposal of the present appeal are that the assessee filed its quarterly return for the year 2005-06 and had also filed annual statement in form VAT-20 on November 17, 2006. The assessment was framed on March 26, 2010 (annexure Al) creating an additional demand of tax amounting to Rs. 1,43,588 after issuing notice u/s 29 of the Act. The Revenue approached the appropriate authority for the grant of extension vide letter dated June 11, 2009 u/s 29(4) of the Act. Vide letter dated July 24, 2009, the time was extended to finalize the assessment up to March 31, 2010. However, the assessee was asked to deposit the amount of demand of tax on or before April 25, 2010. The assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Range, Patiala who vide order dated September 23, 2010 disposed of the appeal remanding the matter to the Excise and Taxation Commissioner, Barnala, to decide the case afresh after giving proper opportunity and reconsidering all the evidence in the presence of the assessee. Feeling dissatisfied, the assessee filed appeal before the Tribunal. The Tribunal vide order dated May 20, 2011 allowed the appeal holding that the assessment was not framed within three years from the date of filing of the annual return and, therefore, was barred by limitation. Hence, the present appeal by the Revenue.

5. The learned State counsel submitted that the return was filed on November 17, 2006, which could be filed up to November 20, 2006. According to the learned counsel, on June 11, 2009, the matter was referred to the appropriate authority for extension of time u/s 29(4) of the Act. The said period was ultimately extended vide letters dated July 24, 2009 (annexure A2) and the assessment framed on March 26, 2010 was, thus, within time. It was urged by the learned State counsel that the Tribunal had erred in holding the same to be

barred by limitation misinterpreting the provisions of section 29(4) of the Act.

6. The learned counsel for the respondent-assessee controverting the aforesaid submissions referred to sub-section (4A) inserted in section 29 of the Act by the Punjab Value Added Tax (Third Amendment) Act, 2010, which is to the following effect:

(4A) Notwithstanding anything contained in sub-section (4), the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2005-06 has already been filed, can be made within a period of three years, commencing from the 20th day of November, 2006.

7. Relying upon the aforesaid amendment, it was contended that despite of sub-section (4) to section 29 of the Act providing for an appropriate authority to extend the period of limitation but by virtue of sub-section (4A) thereof, no assessment could be framed beyond November 20, 2009 in respect of assessment year 2005-06. Learned counsel further submitted that the present case related to the assessment year 2005-06 and, therefore, the assessment framed on March 26, 2010 was bad in law.

8. We have heard the learned counsel for the parties.

9. The point that arises for consideration in this appeal is whether in view of incorporation of sub-section (4A) to section 29 of the Act, the appropriate authority under the Act had the power to extend period of limitation for framing assessment for the assessment year 2005-06 beyond November 20, 2009.

10. The answer to the abovesaid question is in the negative. The similar argument raised before the Tribunal was repelled by the Tribunal with the following observations:

A combined reading of sub-section (4) and newly added sub-section (4A) of section 29, ibid. would reveal that sub-section (4A) of section 29, ibid. override the provisions of sub-section (4) including its proviso as sub-section (4A) ibid. contains non obstante clause. The provisions of this sub-section (4A) postulates in clear and unambiguous terms that assessment could be made only within three years from November 20, 2006, which works out to November 20, 2009 and not beyond that. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading ; in the absence of any doubt or difficulty arising out of such reading of a statue defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. In the present one, no difficulty or doubt arises in interpreting the provisions of sub-section (4A) of section 29 ibid. That being so, it has to be read and understood by its plain reading. This sub-section nowhere says that the Commissioner under the exceptional circumstances could extend the period for framing assessment. Had it been the intention of the Legislature to confer such power upon him, the mention in this regard would have certainly been made in the amending provision. Thus, it crystallizes the conclusion that the Commissioner did not have the power to extend the period for framing assessment for the year 2005-06.

11. It was further observed by the Tribunal as under:

On looking the matter in the backdrop of these observations, it can be unmistakably held that the ''non obstante clause'' engrafted in sub-section (4A) of section 29 ibid. fetters the Commissioner from granting extension of time for framing assessment for the year 2005-06. Thus, the extension granted by him has become non est in the eyes of law.

The said observations of the Tribunal have not been shown to be erroneous or perverse in any manner. No question of law much less a substantial question of law arises in this appeal for consideration of this court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.