(2012) 01 P&H CK 0341

In the Punjab And Haryana At Chandigarh

Case No : VATAP No''s. 33, 34 and 35 of 2011

State of Punjab and Another APPELLANT

Vs

K.C. Motors RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 30, 56, 60, 62, 62(5)

Citation : (2013) 59 VST 187

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Sudeepti Sharma, Deputy A.G., Punjab, for the Appellant; Avneesh Jhingan, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of VATAP Nos. 33, 34 and 35 of 2011 filed by the State against the respondent involving identical issues based on similar facts relating to assessment years 2007-08 to 2009-10. For brevity, the facts are being extracted from VATAP No. 33 of 2011. This appeal has been filed by the Revenue u/s 68(2) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated November 11, 2010 passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as, "the Tribunal") relating to assessment year 2009-10 claiming the 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 without considering the judgment of this honourable High Court in case of Emerald International Ltd. Vs. State of Punjab and Others, is sustainable in law?

(iii) Whether the Tribunal was empowered to order for the hearing of the appeal by the first appellate authority without the compliance of clause (5) of section 62 of the Punjab Value Added Tax Act, 2005?

(iv) Whether there was any error or illegality in the order of the first appellate authority dismissing the appeal of the respondent due to non-compliance of the statutory provisions of section 62(5) of the Punjab Value Added Tax Act, 2005?

(v) Whether the Tribunal has misinterpreted the provisions of section 62(5) of the Punjab Value Added Tax Act, 2005?

(vi) Whether the Tribunal has travelled beyond his jurisdiction in view of the provisions made in clause (3) of section 63 of the Punjab Value Added Tax Act, 2005?

2. The facts necessary for adjudication of the present appeals are that the business premises of the assessee were inspected by the designated officer on January 26, 2010 and 31 loose papers with three diaries were impounded for verification from where it was found that the assessee had sold goods to various parties but were not accounted for in the regular account books. During the assessment year 2009-10, such sales amounting to Rs. 1,03,01,684 were detected which remained unexplained. Accordingly, notice u/s 30 of the Act was issued for framing the provisional assessment for the assessment year in question. None had appeared on behalf of the assessee in the proceedings. The provisional assessment was finalized by the designated officer vide order dated May 31, 2010 raising a demand of Rs. 14,61,149 including penalties under sections 56 and 60 of the Act. Against the assessment order dated May 31, 2010, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals). The application was also filed for hearing the appeal without depositing 25 per cent of the amount of additional demand of tax and penalty as required u/s 62(5) of the Act. The said application was rejected by the appellate authority. Accordingly, the appeal was also dismissed in limine vide order dated August 10, 2010. Feeling aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated November 11, 2010 accepted the appeal and directed the Deputy Excise and Taxation Commissioner (Appeals) for hearing the appeal on merits. Hence, the present appeal by the Revenue.

3. We have heard learned counsel for the parties.

4. The learned State counsel submitted that the respondent-assessee was liable to deposit 25 per cent of the amount of additional demand created by way of tax, penalty and interest in terms of section 62(5) of the Act before the appeal could be heard and not on the total amount of tax, interest and penalty imposed by the assessing authority. Reliance was placed on the decision of this court in Raj Kamal Marbles Marble Market Vs. Deputy Excise and Taxation Commissioner and Others). It was also submitted that the Punjab Value Added Tax (Fourth Amendment) Ordinance, 2011 has been promulgated on August 17, 2011 wherein the principal Act, in section 62(5) for the words "total amount of tax", the words "total amount of additional demand created" had been substituted. Accordingly, it was submitted that the respondent-assessee was liable to deposit 25 per cent of the amount of tax, interest and penalty which was disputed in

appeal.

5. The learned counsel for the respondent controverting the submissions made by the learned State counsel submitted that 25 per cent as envisaged u/s 62(5) of the Act was relating to amount of tax, interest and penalty which was imposed and the assessee having paid more than the same, the Tribunal was right in adjudicating the issue in favour of the assessee. Support was drawn from Ahluwalia Contracts (I) Ltd. v. State of Punjab [2013] 59 VST 183 (P & H) : [2010] 37 PHT 53 (P & H) and State of Punjab and Another Vs. Novelty Associates Pvt. Limited, It was further urged that the Ordinance on which the reliance has been placed was promulgated on August 17, 2011 and is prospective and, thus, would not govern the present case.

6. After giving our thoughtful consideration to the respective submissions of learned counsel for the parties, we find force in the submission made by the learned counsel for the respondent.

7. A Division Bench of this court in State of Punjab and Another Vs. Novelty Associates Pvt. Limited, after following the judgment in Ahluwalia Contracts (I) Ltd.''s case [2013] 59 VST 183 (P & H) : [2010] 37 PHT 53 (P & H) while adjudicating the similar issue had held that the requirement of 25 per cent u/s 62(5) of the Act was on the basis of total demand raised. It reads thus (page 186 in 59 VST):

2. The assessee has preferred an appeal which is pending before the Tribunal. The Tribunal observed that the deposit already made by the assessee being more than 25 per cent of the total demand raised, the appeal was liable to be considered on merits as bar u/s 62(5) of the Act did not apply.

3. Only ground which has been raised on behalf of the appellants is that the deposit was made before the demand was raised and thus, the appeal could not be heard on merits.

4. There is no merit in the submission. There is no requirement u/s 62(5) to deposit 25 per cent after the demand was raised. The deposit already made can certainly be taken into account as held by the Tribunal following order of this court in Ahluwalia Contracts (I) Lid. v. State of Punjab (CWP No. 18650 of 2009 decided on July 29, 2010) [2013] 59 VST 183 (P & H) : [2010] 37 PHT 53 (P & H).

8. Adverting to the judgment in Raj Kamal Marbles Marble Market Vs. Deputy Excise and Taxation Commissioner and Others on which reliance had been placed by the appellant, a perusal of the substantial questions of law claimed therein clearly spells out that the primary issue therein was whether the assessee had complied with the conditions envisaged u/s 62(5) of the Act. The court on facts had concluded that the assessee was unable to substantiate the plea that 25 per cent of the total amount of tax, penalty and interest, if any, had been paid as was claimed by it. Such being not the situation here, the said judgment does not

advance the case of the appellant.

9. Furthermore, in so far as the Punjab Ordinance No. 10 of 2011 dated August 17, 2011 is concerned, the appeal having been adjudicated by the Tribunal on November 11, 2010, whereas Ordinance No. 10 of 2011 was promulgated with effect from August 17, 2011, prospectively, the State cannot derive any benefit therefrom.

In view of the above, the Tribunal was right in holding that the amount of 25 per cent to be deposited was to be calculated on the total amount of tax, interest and penalty which was imposed. Accordingly, no question of law much less a substantial question of law arises in these appeals. There is no merit in these appeals and the same are hereby dismissed. A photo copy of this order be placed on the files of the connected cases.