
(2016) 05 SC CK 0119

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5021-5022 of 2016.(Arising out of Special Leave Petition (C) Nos. 27807-27808 of 2010) With Civil Appeal Nos. 5023 of 2016 @ SLP (C) Nos. 27874 of 2010 And Civil Appeal Nos. 5025-5026 of 2016 @ SLP (C) Nos. 27813-27814 of 2010

State of Punjab

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Citation : (2016) 93 UPTC 325

Hon'ble Judges : A.K. Sikri And R.K. Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Nikhil Nyar, AAG, Mr. Kuldip Singh and Mr. Jagjit Singh Chhabra, Advocates, for the Petitioners; Mr. A. Subba Rao, Mr. Annam D. N. Rao, Mr. A. Venkatesh, Ms. Ankita Chadha, Mr. Sudipto Sivcar, Mr. Rahul Mishra, Mr. Abhishek Anand, Mr. Aditya Bhattachary, Mr. M.P. Devanath, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. Leave granted.

In all these appeals, the question of law that needs to be determined is identical and, therefore, they are taken up for hearing together. However, for the sake of convenience, we will refer to the facts from Civil Appeals arising out of SLP(C) Nos.27807-27808/2010.

2. These appeals pertain to the Assessment Year 2001-2002 for the assessment of sales tax under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act"). The respondent/assessee had filed quarterly returns, which are required under the law, in respect of the aforesaid assessment in terms of Section 11(3) of the Act. Time-limit for completing the assessment provided therein is three years from the end of the year. Accordingly, the last date for assessment in respect of Assessment Year 2001-02 would be 30th April, 2005.

Assessment was, however, not made by the said date. On the other hand, under Section 11(1) of the Act, which empowers the Commissioner to extend the period of three years for passing the order of assessment for such further period as he may deem fit, the necessary consequence of this provision would be that after 30th April, 2005 the assessment would become time barred. However, the said Act was amended by the State Legislature vide Punjab General Sales Tax (Amendment and Validation) Act, 2005 whereby Section 11-CC was added after Section 11-C, which is to the following effect:

"11-CC. Assessments of tax and validation of certain assessments. (1) Notwithstanding anything contained in this Act, the assessing authority, shall pass an order of assessment in respect of the dealers of or the financial years 2000-2001 and 2001-2002 within a period of five years from the last date, prescribed for furnishing the last return in respect of these years:

Provided that no order shall be made under this section against any dealer without giving him an opportunity of being heard."

3. This amendment Act further provided that this amendment shall come into force w.e.f 19th July, 2000 and be deemed to have remained in force as such up to the 11th day of September, 2002. Thus, this amendment was retrospective in nature and covered the period in question i.e. Assessment Year 2001-02. As per the aforesaid amendment, the period of limitation got extended from three years to five years. In the instant case, assessment order was made on 10.07.2006 which was within the limitation as was provided by amended Section 11-CC.

4. In view of the aforesaid statutory provision, the judgment of the High Court holding that the assessment was validly made within the period of limitation is clearly unsustainable. The appeals are, accordingly, allowed.

5. We, however, make it clear that since the assessment is saved by the subsequent amendment and that too by making it retrospective, the assessee shall pay only principal amount of sales tax and no interest or penalty shall be paid.