(2014) 05 P&H CK 0308

In the Punjab And Haryana At Chandigarh

Case No : VATAP Nos. 32 to 36 of 2014

State of Punjab APPELLANT

Vs

Fazilka Cooperative Sugar Mills Limited RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

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

Citation : (2014) 76 VST 228

Hon'ble Judges : Jaspal singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Radhika Suri and Vikram Bishnoi, Additional Advocate-General, Advocate for the Appellant

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of VATAP Nos. 32 to 36 of 2014 as according to the learned counsel for the appellants-State, the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No. 32 of 2014. VATAP No. 32 of 2014 has been preferred by the State under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated July 22, 2013, annexure A3 passed by the Value Added Tax Tribunal, Punjab (in short, "the Tribunal"), proposing to raise the following substantial questions of law:

"(i) Whether, in the facts and circumstances in the case, the impugned order of the learned VAT Tribunal is sustainable in law, in view of the judgments of the honourable Supreme Court in the case of The Indian Aluminium Cables Ltd. and Another Vs. The Excise and Taxation Officer and Another, and Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another, ?

(ii) Whether the order passed by the learned Tribunal by relying upon the judgment of this honourable court in the case of Shubh Timb Steels Limited Vs. The State of Punjab, , is sustainable in law when in the present case, the respondent had intentionally withheld the legitimate purchase tax due to be deposited as per the admitted turnover in the returns?

(iii) Whether the respondent is entitled to pocket the purchase tax withheld intentionally but while selling the finished products and by products the said element was kept in mind and added the same in the sale price of particular item produced out of sugarcane which had ultimately been encashed by the respondent?"

2. A few facts relevant for the decision of the controversy involved as narrated in VATAP No. 32 of 2014 may be noticed. The respondent is engaged in the manufacture of sugar at Fazilka, District Ferozepur. It filed its monthly returns relevant to assessment year 1992-93. Not satisfied with the same, statutory notice was issued to the respondent by the assessing authority. After giving opportunity to the respondent and examining the record, it was found that the basic raw material used by the respondent was sugarcane and that during the process of manufacturing sugar, by products like molasses, bagasse and press mud were produced. Thus, the respondent was liable to pay purchase tax on sugarcane. The assessment order was passed on June 26, 2003, annexure A1 by the Assistant Excise and Taxation Commissioner (AETC) whereby tax demand of Rs. 63,18,946 was raised for the purchase tax due from the respondent. Aggrieved by the order, the respondent filed appeal before the Deputy Excise and Taxation Commissioner (DETG). The said appeal was dismissed by the DETC vide order dated May 20, 2005, annexure A2. It was held that no change in the assessment order was made in so for as the declared turnover of the dealer was concerned and that the figures mentioned in the return were accepted and only the tax which was due as per the said return had been worked out in the assessment order. Aggrieved by the order, the respondent filed further appeal before the Tribunal. Vide order dated July 22, 2013, annexure A3, the Tribunal relying upon the judgment of this court in the case of Shubh Timb Steels Limited Vs. The State of Punjab, held that the assessment order passed on June 26, 2003 was time-barred as it could not have been passed beyond April 30, 1998, i.e., beyond a period of five years. The appeal was accepted and the impugned orders were set aside. Hence the instant appeals by the State.

3. We have heard learned counsel for the appellants and perused the record.

4. The primary issue that arises for consideration in these appeals is whether in view of amendment of section 11 of the Punjab General Sales Tax Act, 1948 (in short, "the 1948 Act") by Ordinance of 1998 effective from March 3, 1998 which was replaced by Punjab Act 12 of 1998 published on April 20, 1998, whereby limitation of three years for completion of the assessment has been prescribed, any assessment order for assessment years up to 1997-98 can be validly passed after April 30, 2001.

5. The matter is no longer res integra. This court while deciding identical issue against the appellant vide order dated February 26, 2014 in VATAP No. 110 of 2013 (State of Punjab v. Patiala Cooperative Sugar Mills Limited, Rakhra, District

Patiala [2014] 76 VST 217 (P & H)) along with connected appeals had held that in all those cases which pertain to assessment year prior to insertion of the period of limitation under section 11(3) of the Act by Ordinance with effect from March 3, 1998, which was replaced by Punjab Act 12 of 1998 published on April 20, 1998, the assessment was required to be finalised latest by April 30, 2001.

6. In view of the above, the issue is decided against the appellants and in favour of the assessee. The substantial questions of law stand answered accordingly. Consequently, finding no merit in these appeals, the same are hereby dismissed.