**(2016) 08 P&H CK 0285**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 11063 of 2014 (O&M)

Sundesh Springs Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 04-08-2016

**Acts Referred:**

**Citation :** (2016) 339 ELT 543

**Hon'ble Judges :** Rajesh Bindal and Harinder Singh Sidhu, JJ.

**Bench :** Division Bench

**Advocate :** None, for the Petitioners; S/Shri Sanjeev Kumar for Saurabh Goel, Advocates, for the Respondents

**Final Decision :** Allowed

# Judgement

Rajesh Bindal, J.—The petitioners have approached this court impugning the order dated 21-11-2012 (Annexure P-4), passed by the Revisionary Authority, accepting the revision filed by the department against the order in appeal dated 29-3-2011 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II. The Commissioner (Appeals) had set aside the order passed by the adjudicating authority on 30-4-2010.

2. The issue raised in the present petition is that the impugned order passed by the Revisionary Authority cannot be sustained, as the same has been passed by the officer of the same rank as is the appellate authority. The Revisionary Authority had to be an officer of a higher rank than the appellate authority, whose order is impugned before the Revisionary Authority.

3. Learned counsel for the respondents does not dispute the aforesaid legal position.

4. Heard learned counsel for the respondents and perused the paper book.

5. This Court in M/s. NVR Forgings v. Union of India and Others, 2016 (335) E.L.T. 679 (P&H), while considering the same issue, opined as under :

 

5. Learned counsel for the petitioner submitted that the revisional power has been exercised by officer of the same and equal rank who had upheld the order of impugned demand and penalty and dismissed the appeal, i.e., Commissioner (Appeals). Reliance was placed on judgment of this Court in M/s. Prakash Pipes Industries Limited, Mayor, Hisar v. State of Haryana and Another, CWP No. 9415 of 1990, decided on 21-10-2015 in support of the submission.

6. On the other hand, learned counsel for the respondents besides supporting the impugned order relied upon judgment of a Single Bench of Delhi High Court in Labh Singh Atma Singh v. Union of India and Others, AIR 1970 Delhi 171 and judgment of Apex Court in Jayantilal Amratlal Shodhan v. F.N. Rana and Others, AIR 1964 SC 648.

7. In M/s. Prakash Pipes Industries Limited''s case (supra) to which one of us (Ajay Kumar Mittal, J.) was a member, while considering identical situation, after examining the relevant case law on the point, it was held that the revision by the officer of the same rank was not permissible. It was recorded as under :-

"5. The matter is no longer res integra. This Court in Triputi Udyog Ltd. v. State of Haryana (2010) 37 PHT 521 (P&H) while dealing with the identical issue had held that the revision by officer of the same rank was not permissible. It was recorded as under :-

"Re. Que. (2) :

Learned counsel for the assessee submits that the Deputy Excise and Taxation Commissioner was acting as assessing authority and though revisional powers were delegated to the Deputy Excise and Taxation Commissioner, the said powers could be exercised by an officer only in relation to orders passed by his subordinates and not in respect of orders passed by officer of the same or higher rank. He relies upon judgment of Andhra Pradesh High Court in Sri Satya Winery & Distillery Private Ltd. v. State of A.P. (2000) 117 STC 291 and submits that the question of law may be read accordingly. The question appears to have been wrongly formulated. It has been pointed out that the judgment of Andhra Pradesh High Court in Sri Satya Winery has been accepted by the State of Haryana and instructions dated 12-10-1990 have been issued. Accordingly, the Sales Tax Tribunal has been holding that revision by officer of the same or lower rank was not permissible. By way of instances, he has produced following orders of the Tribunal :-

I. M/s. Kailashpati Cotton (P) Ltd., Siwani v. State of Haryana, (2001) 18 PHT 576 (STT Hr).

II. M/s. S.R. Oils & Fats Ltd., Bahalgarh v. State of Haryana, (2002) 19 PHT 272 (STT Hr).

III. M/s. K.C. Textiles Ltd., Pandupindara, Jind v. State of Haryana, (2002) 19 PHT 525 (STT Hr).

 

IV. M/s. Intertia Industries Ltd., Rewari v. State of Haryana, (2003) 21 PHT 442 (STT Hr).

V. M/s. Ram Partap Bansal and Co. P. Ltd., Tohana v. State of Haryana, (1994) 4 PHT 530 (STT Hr). We accordingly answer the question in favour of the assessee and against the revenue and hold that the revision by officer of the same rank was not permissible."

6. Again in the case of the petitioner itself, this Court vide order dated 5-2-2015 in CWP No. 9683 of 1990, considering identical issue wherein notice issued under Section 40(2) of the Act for revising the assessment order by the officer of same rank was challenged, the Department had withdrawn the said notice. However, liberty was granted to the State to issue fresh notice under Section 40(2) of the Act in accordance with law without prejudice to the rights of the parties."

8. In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order-in-appeal as well as revisionary order had been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.

9. In view of the above, the petitions are allowed. The impugned order dated 28-8-2015, Annexure P.8 in CWP No. 24967 of 2015 and order dated 16-9-2015, Annexure P.5 in CWP No. 26321 of 2015 are set aside. However, liberty is granted to the State to proceed afresh in accordance with law but without prejudice to the rights of the parties."

6. For the detailed reasons recorded in the aforesaid judgment, the impugned order dated 21-11-2012, passed by the Revisionary Authority is set aside, however, with liberty to the revenue to proceed afresh in accordance with law.

7. The writ petition stands disposed of accordingly.

 