(2000) 08 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : S.T.C. No. 2 of 1998

Triputi Udyog Ltd. — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 15A, 42, 9

Citation : (2001) 123 STC 149

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition u/s 42(2) of the Haryana General Sales Tax Act, 1973 (for short, "the Act") for directing the Sales Tax Tribunal, Haryana (for short, "the Tribunal") to refer the questions of law mentioned in paragraph 8 of the petition.

2. A perusal of the record shows that Triputi Udyog Ltd. (now known as Surekha Coated Tubes and Sheets Ltd., Faridabad) is engaged in the business of manufacturing of iron and steel. It is registered as a dealer under the Act. On the basis of quarterly returns filed by it in relation to the assessment year 1983-84, the Assessing Authority-cum-Deputy Excise and Taxation Commissioner, Faridabad (East) passed order dated March 31, 1987 holding it liable to pay tax u/s 9 of the Act on a sum of Rs. 1,99,119. The Assessing Authority also created an additional demand of Rs. 3,13,621 in lieu of purchase tax. That order was revised by the Deputy Excise and Taxation Commissioner (Ns)-cum-Revisional Authority who, vide order dated October 12, 1990, created a further additional demand of Rs. 1,41,015. The appeal filed by the petitioner against the order passed by the Revisional Authority was dismissed by the Tribunal on January 16, 1997 primarily in view of the notification dated July 16, 1985 issued by the

Government and the decision reported in Santoshi Tel Utpadak Kendra Vs. The Deputy Commissioner, . The application filed by the petitioner u/s 41 of the Act for review of the order dated January 16, 1997 was dismissed by the Tribunal on July 31, 1997 and reference application filed on its behalf u/s 42 of the Act was also dismissed.

3. The petitioner has averred that the judgment of the Bombay High Court relied upon by the Tribunal has been overruled by the Supreme Court in Tel Utpadak Kendra v. Deputy Commissioner of Sales Tax [1981] 48 STC 248 and, therefore, the order passed by the Tribunal declining to refer the question sought by it should be treated as non est and a direction be issued to it to make reference to this Court.

4. We have heard learned counsel for the parties.

5. The learned Deputy Advocate-General candidly conceded that the decision of the Bombay High Court relied upon by the Tribunal has been overruled by the Supreme Court. He also conceded that this fact has not been taken into consideration by the Tribunal while rejecting the application filed by the petitioner u/s 42 of the Act.

6. In our opinion, the very fact that the judgment relied upon by the Tribunal stands overruled by the Supreme Court should have been treated sufficient by it to refer the questions sought by the petitioner and as it has failed to do that, we deem it proper to allow this petition and direct the Tribunal to refer the following questions to this Court :

"1. Whether, in the facts and circumstances of the case, the order of the Tribunal is sustainable in law that D.E.T.C. (I) was competent to take action in the matter despite the pendency of the appeal before the Tribunal ?

2. Whether in the light of ratio of law laid down by the honourable Supreme Court in Tel Utpadak Kendra v. Deputy Commissioner of Sales Tax [1981] 48 STC 248 where the decision relied upon by the Tribunal in Santoshi Tel Utpadak Kendra v. Deputy Commissioner [1979] 43 STC 307 stands reversed, the decision of the Tribunal dated January 16, 1997 is liable to be set aside ?

3. Whether in view of the retrospective effect of Section 15A explanation by Act 7 of 1996 which has been made applicable to the assessment year 1983-84 also the levy of tax on consumable store, etc., is sustainable in law ?

4. Whether, in the facts and circumstances of the case, the ex parte decision of the Tribunal is legal and void ?"

7. The Tribunal is directed to draw up a statement of case and refer the aforementioned questions to this Court for its opinion.