
(2010) 08 P&H CK 0455

In the Punjab And Haryana At Chandigarh

Case No : G.S.T.R. No"s. 8 of 2001 and 26 of 2002

Trputi Udyog Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 15A, 40, 42

Citation : (2011) 39 VST 475

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This order will dispose of G. S. T. R. Nos. 8 of 2001 and 26 of 2002, as it appears that office has by mistake assigned two separate numbers to the same case.

2. Following questions of law have been referred for opinion of this court u/s 42 of the Haryana General Sales Tax Act, 1973 (for short, "the Act") in compliance with order of this court dated August 4, 2000 in S. T. C. No. 2 of 1998, arising out of order of the Tribunal dated January 16, 1997 for the assessment year 1982-83 :

(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 Vs. The Deputy Commissioner, 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 A. Y. 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 ?.

3. The assessee is a registered dealer and is engaged in manufacture of steel tubes from H. R. coils. The assessee claimed deduction in respect of sales to registered dealers, transfer consignment sales, exports and also goods given for job-work. The assessing officer partly accepted the plea of the assessee. It created additional demand of tax and finalised the assessment vide order dated March 31, 1987. Thereafter, the revisional authority exercised suo motu revisional power u/s 40 of the Act and enhanced the demand of tax. The assessee objected to the revisional order dated October 12, 1990 on the ground that the officer who exercised the revisional power was of the same rank as that of the assessing authority and thus, it was not proper for the said officer to exercise the revisional power. Other objection of the assessee was that it had approached the revisional authority for taking suo motu action but the said application was rejected. Exercise of revisional jurisdiction during pendency of application of the assessee was not permissible. The Tribunal rejected both the objections of the assessee and upheld the order of the revisional authority. It was held that the officer of same rank could exercise revisional power in view of notification dated July 16, 1985, delegating such power to the said authority. It was further held that even if an appeal was pending, the revisional authority could exercise its power as held by the Bombay High Court in *Santoshi Tel Utpadak Kendra v. Deputy Commissioner* [1979] 43 STC 307. The assessee sought reference which was declined and thereafter applied to this court for a direction. This court accepted the plea of the assessee in view of judgment of the honourable Supreme Court in *Tel Utpadak Kendra v. Deputy Commissioner of Sales Tax* [1981] 48 STC 248, reversing the view taken by Bombay High Court.

4. We have heard learned counsel for the assessee and perused the record.

5. None appears for the Revenue.

6. We proceed to deal with the questions referred.

Re. Question (1) :

7. The learned counsel for the assessee submits that the revisional authority was not competent to take a decision when its appeal was pending before the Tribunal, as held by the honourable Supreme Court in *Tel Utpadak Kendra* [1981] 48 STC 248 . This plea cannot be accepted. From the facts stated in the statement of the case and in the order of the Tribunal, it is seen that what was pending was only application seeking revision and thereafter appeal against rejection thereof which was a different situation than pendency of appeal to which judgment in *Santoshi Tel Utpadak Kendra Vs. Deputy Commissioner of Sales Tax* and another, could apply. The judgment of the honourable Supreme Court in *Tel Utpadak Kendra* [1981] 48 STC 248 could not apply to the instant case. As already noticed above, appeal was pending only against refusal to revise order of assessment which stood on different footing. Appeal against assessment

could result in assessment order being examined on the merits and even higher demand being raised which could not have been done in an application for revision filed by the assessee. This being the position, the judgment of the honourable Supreme Court is distinguishable. Question No.1 is accordingly answered against the assessee and in favour of the Revenue.

Re. Question (2)

8. The 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 the 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 the Andhra Pradesh High Court in *Sri Satya Winery* [2000] 117 STC 291 has been accepted by the State of Haryana and instructions dated October 12, 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) *Kailashpati Cotton (P) Ltd., Siwani v. State of Haryana* [2001] 18 PHT 576 (STTHr.).

(II) *S. R. Oils & Fats Ltd., Bahalgarh v. State of Haryana* [2002] 19 PHT 272 (STTHr.).

(III) *K.C. Textiles Ltd. v. State of Haryana* [2002] 19 PHT 525 (STTHr.).

(IV) *Intertia Industries Ltd. v. State of Haryana* [2003] 21 PHT 442 (STTHr.).

(V) *Ram Partap Bansal and Co. P. Ltd. v. State of Haryana* [1994] 4 PHT 530 (STTHr.).

9. 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.

Re. Question Nos. (3) and (4)

10. The learned counsel for the assessee states that in view, of decision of question (2), questions (3) and (4) do not survive. We accordingly leave the said questions unanswered.

11. Reference stands disposed of accordingly.