(2009) 25 VST 216

High Court Of Punjab And Haryana At Chandigarh

Case No: None

State of Punjab and Another		APPELLANT
	Vs	
Malwa Cotton Spinning Mills Ltd.		RESPONDENT

Date of Decision: July 14, 2009

Acts Referred:

- Punjab General Sales Tax Act, 1948 - Section 11

Citation: (2009) 25 VST 216

Hon'ble Judges: M.M. Kumar, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M. M. Kumar, J.
The State of Punjab has challenged order dated December 4, 2008 (A7) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for brevity "the Tribunal") allowing the appeal of the asses-see-respondent. The Tribunal has set aside the order of the Deputy Excise and Taxation Commissioner (A) dismissing the appeal of the assessee-appellant for non-furnishing of proof of prior deposit of 25 per cent of the amount for which demand has been raised by the Revenue.

2. Brief facts of the case may first be noticed. The Assistant Excise and Taxation Commissioner-cum-Assessing Authority analysed the assessment in respect of the assessee-respondent for the period July 1, 2002 to March 31, 2003 u/s 11 of the Punjab General Sales Tax Act, 1948 (for brevity "the Act") vide order dated September 18, 2008 creating additional demand of tax and penalty (A1). It is pertinent to notice that the assessment order was passed by the Assessing Authority after obtaining extension from the Excise and Taxation Commissioner as per the provisions of Section 11(10) of the Act (A2). The assessee-respondent filed an appeal u/s 20(1) of the Act before the Deputy

Excise and Taxation Commissioner. Under Clause (5) of Section 20 of the Act it was required to deposit 25 per cent of the additional demand as a condition precedent for entertainment of the appeal, which was not deposited. An application for hearing of the appeal without deposit of 25 per cent of the additional demand was made by the respondent before the Deputy Excise and Taxation Commissioner although there is no such provision either in the Act or the Rules framed thereunder. Accordingly, the Deputy Excise and Taxation Commissioner dismissed the appeal with the observation that there was no discretion to entertain the appeal without compliance with the provisions of Section 20(5) of the Act (A3). The condition laid down in the order (A3) was not complied with. The appeal of the respondent was dismissed by the Deputy Excise and Taxation Commissioner on November 28, 2008.

3. The assessee-respondent challenged the order dated June 6, 2008 granting extension for the finalization of the assessment by the Assessing Authority up to March 31, 2009 passed u/s 11(10) of the Act. Another appeal was also preferred by the assessee-respondent u/s 20(2) of the Act against order dated October 24, 2008 passed by the Deputy Excise and Taxation Commissioner (Appeal) directing the assessee respondent to deposit 25 per cent of the additional demand. The appeal against the order dated June 6, 2008 passed by the Excise and Taxation Commissioner, Punjab was accepted and the order granting extension was set aside by the Tribunal on November 20, 2008 (A6). A perusal of the order shows that period of limitation to finalise the assessment had expired. The finding of the Tribunal is discernible from the following para which reads thus:

Even if the assessment for the first quarter, i.e., 2002-03 had been completed within time, still the order dated July 25, 2007 had not been in respect of the year 2002-03. It was only for the year 2003-04. As far as year 2002-03 is concerned, the order is dated June 6, 2008 only which appears to have even been wrongly drafted mentioning the earlier dated July 25, 2007 which was not in respect of the year 2002-03 even. In any case as per judgment of the Punjab and Haryana High Court reported in the case of Shreyans Industries Limited, Ahmedgarh v. State of Punjab in Appeal (VAT) No. 16 of 2008 decided on September 26, 2008 : See [2008] 18 VST 493 which was against similar order dated July 25, 2007, powers u/s 11(10) of the PGST Act cannot be exercised after the expiry of prescribed period of limitation. That period had already expired on July 25, 2007 as well as June 6, 2008.

4. The assessee-respondent also succeeded in the other appeal filed against the order of the Deputy Excise and Taxation Commissioner and the Tribunal vide its order dated December 4, 2008 set aside the order of the Assessing Authority on the ground that once the order of the Excise and Taxation Commissioner dated June 6, 2008 extending the period of framing assessment has already been set aside then the assessment order itself would not be sustainable.

5. Mr. Piyush Kant Jain, learned State counsel, has argued that the Tribunal has travelled beyond its jurisdiction in accepting the appeal of the assessee-respondent inasmuch as Clause (5) of Section 20 of the Act is mandatory and no appeal could be entertained without deposit of 25 per cent of the amount of penalty and tax. According to the learned Counsel the order passed by the Deputy Excise and Taxation Commissioner (A) could not have been set aside.

6. Mr. K. L. Goyal, learned Senior Counsel for the assessee-respondent has, however, argued that once the order granting extended period of limitation passed on June 6, 2008 by the Excise and Taxation Commissioner has been set aside by the Tribunal vide its order dated November 20, 2008 (A6) then the order of assessment itself becomes void ab initio. Once there is no possibility of framing of assessment owing to bar of limitation then no useful purpose would be served by insisting on a deposit of 25 per cent of the total demand raised as per the requirement of Section 20(5) of the Act before hearing the appeal of the assessee-respondent.

7. Having heard learned Counsel for the parties and perusing the record, we are of the considered view that the argument of the counsel for the assessee-respondent is meritorious. It may be true that the first appellate authority like the Deputy Excise and Taxation Commissioner was not competent to entertain the appeal without compliance with mandatory provisions of Section 20(5) of the Act yet, it is equally true that the order dated June 6, 2008 granting extended period of limitation was set aside by the Tribunal on November 20, 2008 (A6). In the facts and circumstances of this case, no useful purpose would be served by requiring the assessee-respondent to first deposit 25 per cent of the additional demand raised and then get the appeal decided before the Deputy Excise and Taxation Commissioner. It would only be thereafter that the assessee-respondent would be able to file appeal. We do not feel impressed by such a logic. The appeal is wholly without substance and the same is accordingly dismissed.