IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9415 of 1990

Date of Decision: 21.10.2015

M/s Prakash Pipes Industries Limited, Mayar, Hisar

....Petitioner.

Versus

State of Haryana and another

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Lalit Thakur, Advocate for the petitioner.

Mr. Saurabh Mago, AAG, Haryana.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notification, Annexure P-2, notices dated 4.6.1990 (Annexure P-3), dated 19.6.1990 (Annexure P-5) and dated 23.6.1990 (Annexure P-6).

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. For the assessment year 1984-85, the petitioner was assessed for the sales made by it vide order dated 28.3.1989 (Annexure P-1) by the assessing authority under the Haryana General Sales Tax Act, 1973 (in short "the Act"). Against the order, Annexure P-1, the petitioner filed an appeal before the appellate authority which is pending consideration. Respondent No.2 in exercise

of revisional powers conferred upon him by the State under Section 40 (2) of the Act vide notification dated 16.7.1985 (Annexure P-2) issued a notice dated 4.6.1990 (Annexure P-3) under Section 40(1) of the Act to the petitioner that the registered dealer sale to some of the concerns were wrongly allowed in the assessment order dated 28.3.1989 (Annexure P-1). The petitioner filed reply dated 14.6.1990 (Annexure P-4) to the said notice. Respondent No.2 vide another notice dated 19.6.1990 (Annexure P-5) communicated the details of the sales made to registered dealers which were allegedly wrongly allowed by the assessing authority. Thereafter, respondent No.2 issued a notice dated 23.6.1990 (Annexure P-6) to the petitioner under Section 40/48 of the Act to the effect that it has concealed its turnover qua the goods amounting to ₹ 2,73,14,705.52 and had furnished false returns for the period from 1.4.1984 to 31.3.1985. Hence, the present writ petition.

3. We have heard learned counsel for the parties.

4. The primary challenge in this writ petition is to the initiation of revisional proceedings by issuing notice under Section 40(2) of the Act by the Deputy Excise and Taxation Commissioner (Inspection)-cum-revisional authority, Hisar, on the ground that the assessment in the present case was framed by the Assessing Officer of equal rank, namely, Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Hisar and the revisional power has also been exercised by officer of same and equal rank.

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.

7. In view of the above, the present writ petition is allowed and the impugned notices, Annexures P-3, P-5 and P-6, issued by respondent No.2 are set aside. However, liberty is granted to the State to proceed afresh, under Section 40(2) of the Act, in accordance with law, but without prejudice to the rights of the parties.

(AJAY KUMAR MITTAL)
JUDGE

October 21, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**