IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

VATAP No.69 of 2014
Date of Decision: 26.2.2015

M/s Hero Honda Motors Limited ..Appellant

versus

The State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sandeep Goyal, Advocate,
for the appellant.

Ms. Mamta Singhal Talwar, AAG, Haryana
for the respondents.

RAJIVE BHALLA, J.

The appellant challenges orders Annexures A-13, A-13/A and A-13/B passed by the Haryana Tax Tribunal, at Chandigarh holding that the assessing authority was justified in passing the order imposing interest.

Counsel for the appellant submits that assessment proceedings for assessment year 1998-99 concluded without levy of interest but while considering the question of penalty, a separate order was passed imposing interest. The assessing authority was required to impose interest at the time of assessment and in case interest was not imposed, was required to rectify the error by resort to Section 33 of the Haryana Sales Tax, Act, 1973 (hereinafter referred to as “the Act'). The assessing authority has no jurisdiction to pass a separate order imposing interest after assessment had concluded. Counsel for the appellant relies upon a judgment of the Hon'ble Supreme Court in Commissioner of Trade Tax, U.P. Versus Kanhai Ram Thekedar, [2005] 141 STC 1 (SC). Counsel for the appellant prays that the Tribunal has affirmed the order passed by the assessing authority without considering that such an order cannot be passed.

Counsel for the State of Haryana submits that during assessment proceedings, a separate notice was served, requiring the appellant to show cause why penalty and interest should not be imposed. The assessment order was passed but the show cause notice, regarding penalty and interest remained pending. The assessing authority was well within its jurisdiction to decide the notice and while dropping penalty proceedings, has imposed interest on delayed deposit of tax.

We have heard counsel for the parties, perused the impugned orders, but are not inclined to grant any relief to the appellant.

The appellant was, admittedly, being assessed to different components of value added tax. Admittedly, during pendency of assessment proceedings, the assessing authority issued a notice calling upon the appellant to show cause why penalty and interest be not imposed for delayed deposit of tax. The assessment proceedings concluded with the assessing authority demanding interest on various components of tax but as the question of interest on delayed payment of tax was subject matter of a separate show cause notice, chose not to pass any order along with the assessment order. The assessing authority passed a separate order dropping penalty proceedings, but imposing interest on delayed deposit of tax. The appellant filed an appeal which was dismissed by the appellate authority and is now agitating the matter before the Tribunal.

Before the Tribunal, the appellant raised a preliminary issue that there is no provision in the statute, that empowers the assessing authority, to initiate proceedings for levy/recovery of interest, after passing of the assessment order. The appellant also urged that if the assessing officer was of the opinion that interest has not been imposed, he could have rectified the assessment order, under Section 33 of the Act. The Tribunal has, by a majority of its members, rejected the aforesaid contention.

A considered appraisal of the facts reveals that during assessment proceedings, a separate notice was served, requiring the appellant to show cause against the proposed levy of interest and penalty. The assessing authority should have, ideally decided the question of penalty and interest along with the assessment order but its failure to do so is, at the most, an irregularity, that does not render the impugned order null and void for want of jurisdiction. The judgment in Kanhai Ram Thekedar's case (supra), does not advance the petitioner's case as revenue authorities sought to recover interest without passing an order imposing interest. In the present case, a show cause notice was issued and an order was passed levying interest.

An argument that once assessment stood concluded, the assessing authority could not have passed a separate order demanding interest and should have instead filed an application for rectification of the assessment order and then also within two years, disregards the fact that notice requiring the appellant to show cause against proposed levy of interest, was issued and was pending during assessment proceedings and thus, there was no need to have resort to rectification proceedings under Section 33 of the Act. Consequently, finding no merit, we dismiss the appeal and affirm the majority opinion of the Tribunal.

Any observation/opinion as to the merits of the controversy shall be disregarded by the Tribunal while deciding the appeal on merits.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

26.2.2015
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