IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14546 of 2002 (O&M)
Date of decision: 22.11.2016

Birla Corporation Ltd. .. Petitioner

vs.

The State of Punjab and ors. .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- None for the petitioner.
Mr. Jagmohan Bansal, Addl. A.G., Punjab

Rajesh Bindal, J.

The writ petition was admitted on 10.04.2003. When it was taken up for regular hearing on 30.07.2014, none appeared on behalf of the petitioner. Even on 17.09.2014 none appeared on behalf of the petitioner and actual date notice was issued to the petitioner. As per office report, notice has been received back unserved with the report that office of Birla Corporation Ltd. has been closed long back. Under these circumstances, this Court has two options either to dismiss the writ petition for non-prosecution or to decide the same on merits keeping in view the issue raised therein. We are adopting the second option as the legal issue raised by the petitioner in the writ petition is covered by the judgment of Hon'ble the Supreme Court in ***State of Punjab & Ors. vs. Bhatinda District Coop. Milk. P. Union Ltd. 2007(11) SCC 363*** .

The petitioner has approached this Court seeking a direction to restrain the respondents from re-opening the assessment by issuing notices dated 04.07.2002(Annexure P-37/T) and 09.07.2002 (Annexure P-38) issued under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). As per facts available on record the assessments of petitioner company for the assessment years from 1989-90 to 1993-94 were framed on the following dates:-

1989-90(Annexure P-1)	19.07.1993
1990-91(Annexure P-2)	30.09.1993
1991-92(Annexure P-3)	16.11.1993
1992-93(Annexure P-4)	26.07.1994
1993-94(Annexure P-5)	24.11.1994

In the earlier notices issued on 09.01.1998 in the first round, revisional proceedings were sought to be initiated for the aforesaid assessment years by issuing notices by the Assistant Excise and Taxation Commissioner, Faridkot. The same were challenged by the petitioner by filing CWP No. 1484 of 1998 in this Court, which was disposed of 11.11.1998 by passing the following order:-

> "After having instructions from the officer concerned Ld. Additional A.G., Punjab states that notices Annexures P/6 to P/11 shall be withdrawn. In that view of the matter this petition has been rendered infructuous and is disposed of as such. It will, however, be open to the respondents to proceed against the petitioner in accordance with law."

Perusal of the aforesaid order shows that the State having found that the notices were issued by the incompetent authority, had withdrawn the same, the writ petition was disposed of as infructuous. However, liberty was given to the respondents therein to proceed against the petitioner in accordance with law.

Subsequent thereto, notices were issued to the petitioner on 18.02.1999 for the aforesaid assessment years seeking to initiate suo moto proceedings for revision of the assessments under Section 21(1) of the Act.

It was during the pendency of those proceedings that notices (Annexures P-37/T and P-38) under sections 21(1) of the Act for appearance before the authority were issued to the petitioner. The prayer made by the petitioner is for quashing of the revisional proceedings on the ground of delay.

In the case in hand, it is evident from the facts on record that the earlier notices issued to the petitioner on 09.01.1998 were withdrawn by the department as those notices were found to be issued by the incompetent authority. Thereafter, fresh proceedings were initiated on 18.02.1999. The issue regarding initiation of proceedings for revision under Section 21(1) of the Act after a time gap of five years or more was considered by Hon'ble the Supreme Court in ***Bhatinda District Coop. Milk P. Union Ltd.'s case (supra).*** Though no interim stay has been granted, however, learned State counsel submitted that revisional orders have not been passed.

As none has appeared for the petitioner, we deem it appropriate to dispose of the writ petition by giving liberty to the petitioner to raise the issue regarding delay in issuing notices on 18.02.1999 for revision of the assessments framed, in terms of law laid down by Hon'ble the Supreme Court in ***Bhatinda District Coop. Milk P. Union Ltd.'s case (supra)*** at the time of hearing in the revisional proceedings.

Ordered accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

22.11.2016
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No