IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

GSTR No. 15 of 2009
Date of decision: February 19,2020

M/s Shah Knitwears

.. Petitioner

v.

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. L. Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, advocate for the petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

...

AVNEESH JHINGAN, J.

By way of reference under Section 22 of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), the following questions have been referred for opinion:

"1) Whether in the facts and circumstances of the case, the Tribunal is correct in holding that the petitioner is not entitled to the claim of deemed assessment under Section 11-E of the Punjab General Sales Tax Act, 1948 read with Rule 33-B of the Punjab General Sales Tax Rules, 1949 and notification dated 9.7.1999 when the substantive appeals on merits were pending before the Deputy Excise & Taxation Commissioner, Patiala Division, Patiala against order dated 29.7.1994 passed by the Assessing Authority, Ludhiana ?

2) Whether the Tribunal has properly interpreted Rule 33-B of the Punjab General Sales Tax Rules, 1949 and the notification dated 9.7.1999 in view of the fact that it is well settled that the appeal is in continuance of the original suit and assessment as held in Ruling 90 STC 526, 14 STC 976, 22 STC 518?

By this order, two references bearing GSTR Nos. 4 and 15 of 2009 are being disposed of as similar questions are involved for the assessment years 1987-88 and 1992-93. For the convenience sake, facts for the assessment year 1987-88 are being noted.

The dealer filed statutory return and the assessment was finalised on 19.8.1996 creating a demand of ₹1,11,672/- under the Act and ₹11,55,590/- under the Central Sales Tax Act, 1956. Aggrieved of the assessment order, appeal was filed. The Appellate Authority vide order dated 8.1.1997 directed certain pre-deposit to be made for entertainment of the appeal. The matter ultimately travelled to the Tribunal and vide order dated 29.9.1998 appeal was entertained the appeal without any pre-deposit.

Section 11-E of the Act was enabling provision for the State Government to notify deemed assessment as per the returns filed for any class of dealer, for any prescribed period subject to payment of amount and compliance of conditions prescribed. The State Government issued notification No. GSR.54/PA46/48 Ss. 11E and 27/Amd (120) 99 dated 9.7.1999. By the said notification, Rule 33B was added in Punjab General

Sales Tax Rules, 1949 (for short, 'the Rules') By the said Rule, the procedure and conditions for deemed assessment were prescribed. Section 11-E of the Act and relevant portion of the notification are reproduced below:

> "**Section 11-E**
>
> **[DEEMED ASSESSMENT]**
>
> Notwithstanding anything contained in this Act, if the State Government is satisfied that it is necessary and expedient so to do in public interest, it may by notification in the Official Gazette, direct that assessment in respect of any class of dealers, for any prescribed period, shall be deemed to have been made by the concerned assessing authorities as per their returns already furnished, on such date, on payment of such amount and subject to such conditions as may be prescribed.
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> **Notification dated 9.7.1999**
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> In exercise of the powers conferred by Section 27 read with Section 11E of the Punjab General Sales Tax Act, 1948 (Punjab Act 46 of 1948), and all other powers enabling him in this behalf, the Governor of Punjab, without previous publications, is placed to make the following rules further to amend the Punjab General Sales Tax Rules, 1949, namely:-
>
> RULES
>
> 1. (1) These rules may be called the Punjab General Sales Tax (fifth amendment) Rules, 1949.
>
> (2) They shall apply to the cases, which are pending for

assessment upto the year 1994-95 including those in which proceedings for assessment had already been initiated."

During appeal proceedings, the petitioner never pursued the challenge to the assessment order on merits, rather it was argued that as the notification dated 9.7.1999 had come, the dealer should be deemed to be assessed as per the return in light of the notification. The Appellate Authority vide order dated 27.2.2002 dismissed the appeal holding that the notification will not apply to the dealer as the assessment was framed prior to the notification. The order of the Appellate Authority was upheld by the Tribunal on 18.2.2003.

The argument of learned counsel for the petitioner is that as the appeal was pending against the assessment order, it is in continuation of the original proceedings and therefore as per the notification, there should be deemed assessment. He places reliance upon decision of the Supreme Court in **Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur and others, (1963) 14 STC 976.**

The contention raised lacks merit. The proposition that the appeal is continuation of the original suit will be of no help in the present case. What is to be considered is whether the case of the dealer falls within Rule 1(2) of the Punjab General Sales Tax (fifth Amendment) Rules, 1949.

As per the Rule quoted above, the same shall apply to cases in which assessment is pending upto year 1994-95 and shall include even the cases in which the assessment proceedings had been initiated. From a plain reading of the Rule, it is evident that it does not cover the cases where the assessment has been finalised. In the case of the petitioner, the assessment order was passed in 1996 whereas the notification was dated 9.7.1999. Merely that the appeal was pending will not make the case of the petitioner eligible under the Rules.

The reliance upon the decision of the Supreme Court in **Ghanshyamdas's case (supra)** is of no help. The Apex Court was dealing with the construction of provision re-assessment specifically with the phrase used 'escaped assessment' and that "Does it include, as learned counsel for the appellant contends, a case where no assessment has been made at all or, as learned counsel for the respondent contends, take in only the post-assessment detection of evasion of tax?". It was held that the assessment proceedings would continue till final order of assessment was made in regard to the returns filed.

The case of the petitioner does not fall in the phrase 'pending for assessment' as the assessment proceedings only continued till the passing of assessment order in 1996.

In view of the above, both the questions are answered against the petitioner.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 19,2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No