

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**VATAP-279-2018 (O&M)
Date of Decision:06.12.2022**

M/s Prakash Webtech Pvt. Ltd., Faridabad Appellant

versus

State of Haryana and others Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: Mr. Rajiv Agnihotri, Advocate for the appellant.

Ms. Shruti Jain Goyal, DAG, Haryana.

TEJINDER SINGH DHINDSA, J. (ORAL)

Instant appeal has been filed under Section 36 of the Haryana Value Added Tax Act, 2003 (hereinafter referred to as the '2003 Act') seeking quashing of the order dated 14.12.2010 (Annexure A-2) passed by the Deputy Excise and Taxation Commissioner (Inspection)-cum-Revising Authority, Faridabad whereby the assessment order dated 26.03.2010 passed by the Assessing Authority pertaining to assessment year 2006-07 stands revised. Further challenge is to the order dated 22.12.2017 (Annexure A-4) of the Haryana Tax Tribunal, Chandigarh affirming the order passed by the Revisional Authority but deleting the component of interest on the additional demand of tax.

Appellant-company is a private limited company engaged in the

manufacturing and selling of wires and cables. The Company is registered with the Department of Sales Tax under the '2003 Act' as also the Central Sales Tax Act, 1956. Counsel submits that the appellant-company was assessed to tax by the Assessing Authority, Faridabad vide order dated 26.03.2010 for the assessment year 2006-07. The Revisional Authority revised the assessment order vide order dated 14.12.2010 creating an additional demand of Rs. 25 lakhs including interest of Rs.12.50 lakhs. Company preferred an appeal before the Haryana Tax Tribunal and vide order dated 22.12.2017 (Annexure A-4) the order of the Revisional Authority has, in principle, been affirmed subject to modification that the interest on additional demand of tax so created for the first time by the Revisional Authority shall be leviable from 14.12.2010 i.e. the date of passing of the order in revision and not from any earlier date.

Counsel urges that all aspects had been considered and complete findings had been recorded by the Assessing Authority. It is argued that without there being any illegality and impropriety in the assessment order the Revisional Authority has passed the impugned order dated 14.12.2010 (Annexure A-2) on extraneous record which could not have been taken as a basis for initiation of revision proceedings. Further argued that the Revisional Authority has acted beyond the mandate of Section 34 of the '2003 Act'. Reliance has been placed upon a judgment of this Court in **Banarasi Dass Talwar vs. The Deputy Excise and Taxation Commissioner, Jullundur Division, Jullundur (1983) 53 STC 150** to contend that the jurisdiction vested in the Revisional Authority is confined to only the material which was before the Assessing Authority on the basis of which the original order had been passed.

Per contra, learned State counsel has justified the passing of the order by submitting that the Revisional Authority has not only to see the legality and propriety of the assessment order but is obligated to watch and protect the interest of the State as well and under such circumstances the revisional powers under Section 34 of the '2003 Act' are always open to be invoked.

We have heard counsel for the parties and have perused the pleadings on record.

Section 34 of the '2003 Act' reads as follows:-

Revision.

“34. (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.”

A bare reading of the statutory provision would make it clear that in case the assessment order passed by the Assessing Authority is found to be prejudicial to the interest of the State it would be open for the Revisional Authority to intervene and exercise the powers of revision.

In the facts of the instant case the issue that came to be considered by the Revisional Authority came to be summed up in the following terms:-

“ In the Balance Sheet as at 31.03.2007 of the dealer/the dealer company (M/s Prakash Webtech Pvt. Ltd.) credit facility availed by the dealer from Bank against hypothecation of stock stands at Rs. 1,19,88,578/- whereas Closing Stock shown in Trading A/c for the year ending as 31.03.2007 is mere Rs. 29,28,386/-. As per banking norms, if 30% margin would have been stipulated by the Bank, then the closing stock of the dealer unit should have been more than Rs. One and half Crore. Meaning thereby, the dealer has suppressed a Gross Profit of Rs. One and quarter crore. The dealer needs to resolve this crux and to explain the paradox to avert the levy of VAT on the Gross Profit deemed to be determined accordingly, beside action/interest under the Act. ”

The Revisional Authority noticed that the appellant/company had suppressed sales of more than Rs. One Crore and as per trading account furnished by it before the Assessing Authority, the figure of the closing stock was only at Rs. 29,28,386/-. On the strength of the material/record which had already been placed before the Assessing Authority it was noticed that the sales of the appellant/assessee from 1st to 4th quarter of the disputed year were consistently declining and in the 4th quarter it had come to nil.

In spite of that the appellant/assessee had not stopped from showing/making

purchases of the goods and accordingly a view was taken that such modus is clearly to “spoof” the State. Such view cannot be said to be beyond the powers of Section 34 of the '2003 Act'. Material already before the Assessing Authority has been taken into consideration and as such the judgment cited by counsel in the case of **Banarasi Dass Talwar (supra)** is clearly distinguishable.

We find the order passed by the Haryana Tax Tribunal dated 22.12.2017 to be on valid and cogent reasons.

It is only issues of facts which had been gone into.

The present appeal does not involve any substantial question of law.

No interference is warranted.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

06.12.2022
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Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No