IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 **CWP-33824-2019** (O&M)
Date of decision:-54.07.2023

M/S PASCO AUTOMOBILES THROUGH ITS PROPRIETOR SANJAY PASSI

.... Petitioner

Vs

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. J.K. Mittal, Advocate,
Mr. Arjun Kundra, Advocate and
Mr. Vishal Sharma, Advocate for the petitioner.

Mr. Sunish Bindlish, Advocate with
Ms. Sidhi Bansal, Advocate and
Ms. Ridhi Bansal, Advocate for the respondents.

Ritu Bahri, J. (Oral)

In the present petition, the petitioner does not press his prayer to challenge the vires of Rule 5A of the Service Tax Rules, 1994. He restricted his prayer to quashing of the impugned letter/notice dated 24.09.2018 and 27.03.2019, Annexures P-1 and P-3 respectively as well as the impugned summons dated 06.11.2019, Annexure P-7.

The impugned notices, Annexures P-1 and P-3 have been issued under Rule 5-A of Service Tax Rules, 1994 and the information from the petitioner has been sought by giving documents of service tax audit with respect to the period 2013-2014 to June, 2017. As per Section 73 of Finance Act, 1994, the entire proceedings of recovery of service tax are to be completed within a maximum period of 5 years. Relevant extract of Section 73 of Finance Act, 1994 is reproduced as under:-

> *"SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —*
>
> *(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice : Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —*
>
> *(a) fraud; or*
>
> *(b) collusion; or*
>
> *(c) wilful mis-statement; or*
>
> *(d) suppression of facts; or*
>
> *(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted."*

In the present case, the notice was issued for 2013-2014 up to June, 2017 and w.e.f. June, 2017, 5 years have come to an end in June, 2022. Hence till date the proceedings have not been finalized and as per the Section 73 of Finance Act, 1994, proceedings pursuant to the notices, Annexures P-1 and P-3 cannot be finalized by the respondents now.

Learned counsel for the respondents has further informed the Court that pursuant to the order dated 20.02.2023, the petitioner had sent letters on 16.11.2019, 27.03.2019 and 21.02.2022 to provide documents pursuant to the notices, Annexures P-1 and P-3 which he has not given till date and as per the respondents, proceedings are still pending. As per notice under Section 73 of Finance Act, 1994, the proceedings have to be concluded within 5 years.

In the present case, proceedings pursuant to the notice cannot be continued now. As such, writ petition is allowed. The letter/notice dated 24.09.2018 and 27.03.2019, Annexures P-1 and P-3 respectively are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25.07.2023
pooja saini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No