2024:PHHC:138709-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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VATAP-243-2014 (O&M)
Decided on : 22.10.2024

State of Haryana

. . . Appellant(s)

Versus

M/s Jain Vidyut, Ambala Cantt. and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Mamta Singla Talwar, DAG, Haryana.

None for the respondent(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. No one appears for the respondent inspite due service.

2. Learned State counsel for the appellant submits that Haryana Tax Tribunal has erred in setting-aside the order passed under Rule 7(5) of the Haryana VAT Act, 2003 on 04th March, 2011, of transferring the case from one Assessing Authority to another, as all have been set-aside with remanding back to the Assessing Authority for fresh adjudication.

3. While issuing notice in this appeal, the Court had only admitted the appeal for determination of substantial questions of law as referred in para 9 of the appeal. The show cause notice issued on 18th February, 2015 by this Court, admitted the question relating to condoning the delay as well as in the main appeal on the point that the Tribunal should remand the matter to the Assessing Authority to decide afresh.

4. It is a case where the respondent challenged the action of the DETC Ambala, dated 04th March, 2011, transferring the case from one

Assessing Authority to another without communicating the same to the assessee, which resulted new Assessing Authority to proceed to pass an order on 02nd March, 2012, finalizing the assessment *ex-parte*.

5. We find that the Tribunal had taken a view after considering the law that communication of any order of transferring the case from one Assessing Authority to another is *sine qua non* before the concerned Assessing Authority proceeds to pass the assessment order.

6. We are in agreement with the view taken by the Tribunal to the aforesaid extent, however, we find that while passing the order on 07th November, 2013 by the Tribunal, it set-aside the impugned order of assessment on the ground of lack of jurisdiction without giving liberty to the Department to pass a fresh order.

7. We agree with the contention raised by the counsel for the State that the assessment cannot be left undecided. If there is an error committed, the same deserves to be corrected. In fact, once the Tribunal reached to the conclusion that the transfer of a case from one Assessing Authority to another was unjustified, then it has to be treated as an order *void ab initio*. Since the same was not communicated to the assessee in terms of Rule 7(5) of the Rules, the corollary which the Tribunal ought to have proceeded, was to direct the earlier Assessing Authority to proceed and pass assessment order after giving opportunity of hearing to the assessee.

8. We, accordingly, set-aside the order passed by the Tribunal to the aforesaid extent and direct the Assessing Authority, Ward No.II, Ambala, which was the original Assessing Authority of respondent No.1 – assessee, to conduct the assessment proceedings and we accordingly, set-aside the order passed by the subsequent Assessing Officer dated 22nd March, 2012.

9. The assessee would be free to take up all the objections before the concerned Assessing Officer and the order shall be passed by the Assessing Officer within a period of four months.

10. It is made clear that if respondent No.1 – assessee does not cooperate, the Assessing Authority would be free to pass an *ex-parte* order.

Appeal stands disposed of accordingly.

Pending misc. application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

October 22, 2024
J.Ram

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