

Before V. Ramaswami, C.J. & Ujagar Singh, J.

M/S PRESTOLITE OF INDIA LTD., Faridabad,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 9484 of 1987.

December 16, 1987.

Punjab General Sales Tax Act (XLVI of 1948)—Section 11(2)—Haryana General Sales Tax Act (XX of 1973)—Section 41—Assessee's returns accepted by Assessing Authority—Assessment order made thereon—Order—Whether based on best judgment assessment—Assessee claiming concessional rate of tax in face of non-production of C & D forms—Assessing Authority—Whether required to issue notice under Section 11(2) for production of forms—Forms—Whether can be produced at any stage of the assessment proceedings—Nautre of C & D forms—Stated.

Held, that there was no duty on the Assessing Authority to issue notice under Section 11(2) of the Punjab General Sales Tax Act, 1948 for collecting the C & D forms when the returns submitted by the company have been accepted and when the Assessing Authority does not want to proceed on the best judgment assessment basis.
(Para 4)

Held, that no part of the turnover was added or subtracted by the Assessing Authority and the entire returns submitted by the Company have been accepted. Therefore, it has to be held that the assessment order made by the Assessing Authority is not based on the best judgment assessment or that any question of period of limitation for making assessment order arises.
(Para 4)

Held, that C & D forms or duplicate thereof can be produced at any stage of the assessment proceedings before the Assessing Authority, the Commissioner or the Tribunal or even in the High Court. Production of C & D forms is mandatory in the sense that without production of said forms it is not possible for any Assessing Authority to give concessional rate of tax. It is directory in the sense that such forms could be produced at any stage of the assessment proceedings.
(Para 4)

Writ Petition under Articles 226/227 of the Constitution of India, praying that :—

- (a) a writ of certiorari be issued, quashing the impugned annexures P/2 and P/2 (a), P/3, P/4, P/6 and P/8.

- (b) *any other writ, order or direction, which this Hon'ble High Court deems fit in the facts and circumstances of the case be also issued :*
- (c) *It is further prayed that during the pendency of this writ petition, the Hon'ble Court would be pleased to stay the recovery proceedings before respondent No. 2 in view of the circumstances mentioned in the foregoing paras.*

R. P. Sawhney, Advocate, for the Petitioners.

JUDGMENT

(1) This is a writ petition under Articles 226/227 of the Constitution of India, *inter alia* praying for quashing of an order of the Sales Tax Tribunal, Haryana, Chandigarh. The case relates to the assessment for the assessment years 1971-72 and 1972-73. The assessments were made both under the Punjab General Sales Tax, Act, 1948 (briefly the Punjab Act) and the Central Sales Tax Act, 1956 (briefly the Central Act). The Assessing Authority accepted the returns relating to the assessment year 1971-72. In respect of the assessment year 1972-73, the returns submitted by the petitioner M/s Prestolite of India Limited, Faridabad (the Company shortly) for two quarters were available with the Assessing Authority and they had been accepted. For the second two quarters, it was contended by the Company that it had submitted its returns, but since those were not found on the record of the Department, the Assessing Authority accepted the records furnished by it by way of Trading Account and determined the turnover in relation to the sale. Therefore, ultimately this is a case where the returns of the Company had been accepted by the Assessing Authority. The Assessing Authority issued a notice to the Company for hearing in the assessment proceedings as the assessee claimed concessional rate. The Company appeared before the Authority through its counsel and made representation that by that time, due to fire accident, its records were destroyed and it could not produce the original C and D forms on the basis of which, it claimed a concessional rate of tax. Although the Company did not dispute the turnover determined by the Assessing Authority for the purpose of local tax and central tax, they contended before the Assessing Authority that the Company was entitled to a concessional rate of tax. Since the Assessing Authority had no jurisdiction to give concessional rate of tax without production of C and D forms, it gave time to the Company to produce evidence or the duplicate of

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C and D forms. The Assessing Authority gave 3/4 opportunities to the Company for the said purpose, but it did not produce the duplicate records. Since limitation for the assessment year was fast expiring, the Assessing Authority completed the assessment for both the assessment years 1971-72 and 1972-73, under two different orders, under the Punjab Act and the Central Act, dated 12th December, 1978. The Company preferred 4 appeals, 2 in respect of the State Tax and 2 in respect of the Central Tax before the Joint Excise and Taxation Commissioner (A), Rohtak (to be referred to as the Commissioner). Even before the Commissioner, the Company did not produce the C and D forms. It had been contending that the records were destroyed by fire and, therefore, they could not produce the C and D forms and that the Assessment proceedings before the Assessing Authority were invalid. It was also contended on behalf of the Company before the Commissioner that a period of 5 years only was available for assessment under the relevant provisions of the Punjab Act which was in force during the years 1971-72 and 1972-73, as also under the Haryana General Sales Tax Act, 1973 (to be called the Haryana Act) which were now applicable for both the assessment years 1971-72 and 1972-73 and that the assessments were barred by limitation. The Commissioner rejected both the contentions and held that the case under consideration before him was not one under the best judgment assessment and no question of period of limitation, as prescribed under the relevant provisions could arise. On the question, whether C and D forms could be produced, the Commissioner held that they had to be produced if the Company wanted to claim the concessional rate of tax. It may also be mentioned that the Company did not produce either the original or the duplicate of C and D forms before the Commissioner also. After the dismissal of both the appeals, the Company preferred further appeals to the Sales Tax Tribunal, Haryana (hereinafter the Tribunal). The Tribunal accepted the findings of both the Assessing Authority and the Commissioner and held that it was not a case of best judgment assessment and that the only controversy before it, therefore, was, whether disallowing concessional rate of tax on the turnover determined, without production of declarations in C and D forms is justified. The Tribunal held that the Company was given sufficient opportunity to produce the said records, but it did not do so. Therefore, the Company is not entitled to the concessional rate of tax, both under the Punjab Act and the Central Act, as in force for the assessment years 1971-72 and 1972-73, as also under the subsequent enactment which is now

applicable. There is a provision for making a reference to this Court if any question of law is raised, but the Company did not file any such application before the Tribunal for reference to the High Court. However, the Company filed an application before the Tribunal for reviewing its order. The provision under which it purported to file the review application was section 41 of the Haryana Act. It provides that if an assessee discovers any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when such an order was made, or on account of some mistake or error apparent on the face of the record, can file a review application. We have gone through the review application. We find that the Company has not relied on any new or important matter or evidence, which after exercise of due diligence, was not within its knowledge. In fact, the Tribunal pointed out that the Company raised the same contentions which it had raised at the time when the appeal was filed before the Commissioner or before him and ultimately he found that there were no grounds for allowing the review application and dismissed the same.

(2) Dissatisfied with the dismissal of the review application by the Tribunal, the Company again filed a second review application before the same Tribunal. The Tribunal dismissed the second application, holding that it was not based on any new material. In the view of the Tribunal, it was not the intention of the legislation that proceedings should be continued by filing further applications for reviewing the earlier orders without limit, as contemplated under section 41 of the Haryana Act and dismissed the second review application also.

(3) Still aggrieved by the said order, the present writ petition has been filed by the Company. However, it may be mentioned that this writ petition relates to the assessment year 1971-72 alone.

(4) The first point raised in this petition is that the Company was not given any notice under section 11(2) of the Punjab Act or under the corresponding provisions of the Haryana Act, calling upon it to produce the duplicate of C and D forms. We are unable to agree with the learned counsel for the Company on this point

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that there was any duty on the Assessing Authority to issue notice for collecting the C and D forms when the returns submitted by the Company have been accepted and when the Assessing Authority does not want to proceed on the best judgment assessment basis. Factually, however, we may mention that notice was given to the Company, as seen from the record. The Company was represented by its counsel before the Assessing Authority. The learned counsel for the Company took time for producing the C and D forms or duplicate thereof before the Assessing Authority. However, in spite of the fact that 3/4 adjournments were given to the Company for the said purpose, it did not produce the said records. In these circumstances, the Assessing Authority felt that as the assessment in question was time bound, he could not wait any more and made the assessment orders in question. As may be seen from the provisions of the Punjab Act or the corresponding provisions of the Haryana Act, the question of limitation would arise only where the return filed by a dealer is not accepted by the Authority and the dealer, by a notice, is required to produce any further information and that was not furnished by him. In this case, the question of best judgment assessment does not arise at all. No part of the turnover was added or subtracted by the Assessing Authority and the entire returns submitted by the Company have been accepted. In these circumstances, we cannot hold that the assessment order made by the Assessing Authority is based on the best judgment assessment or any question of period of limitation is said to have arisen. It may be that the authorities proceeded on the basis that production of C and D forms are mandatory. It is also true that the Assessing Authority insisted on C and D forms being produced in order to give concessional rate of tax to the Company, but, as is now well settled that such forms or duplicate thereof can be produced at any stage of the assessment proceedings before the Assessing Authority, the Commissioner or the Tribunal or even in the High Court, but the Company did not produce any such records at

any such stage nor did it ask for acceptance thereof. In such circumstances, there is no point in contending that the assessment orders made on the basis that the production of C and D forms is mandatory are wrong. It is mandatory in the sense that without production of C and D forms, it is not possible for any Assessing Authority to give concessional rate of Tax. It is directory in the sense that such forms could be produced at any stage of the assessment proceedings. Therefore, we find no ground to interfere with the impugned orders.

(5) In view of the foregoing circumstances, there are no grounds to interfere and the writ petition is accordingly dismissed.

R.N.R.