(2014) 05 P&H CK 0265

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 10950 of 2014

Aggarwal Construction Company — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 227, 245
Punjab Value Added Tax Act, 2005 — Section 6(7)

Citation : (2014) 05 P&H CK 0265

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : J.S. Bedi, Advocate for the Appellant

Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for declaring Section 6(7) of the Punjab VAT Act, 2005 (in short "the Act") and the notification dated 4.10.2013 (Annexure P-9) to be unconstitutional being violative of Articles 14, 19, 245, 265, 286 and Article 301 read with Article 304 of the Constitution of India; for issuance a writ in the nature of certiorari for quashing notification dated 4.10.2013 (Annexure P-9) in so far as it ultra vires Section 6(7) of the Act; for issuance of a writ in the nature of Mandamus directing the respondent-authorities to refund the amount of tax collected u/s 6(7) with the support of notification dated 4.10.2013 (Annexure P-9) to the extent it is due against the respondents as having been paid in excess; for issuance of a writ of Mandamus declaring the Act dated 2.11.2011 (Annexure P-7) to be unconstitutional; further declaring Section 39A of the Act as inserted by the Punjab Value Added Tax (Second Amendment) Act, 2013 as notified on 15.11.2013 (Annexure P-10) to be ultra vires; for issuance of a writ of Mandamus directing respondent No. 1 not to enforce the recovery of any tax and to allow the petitioner to import the goods without payment of any tax on the import of such goods in the State.

2. Primary grievance of the petitioner in this writ petition is that the petitioner

had moved an application dated 5.3.2014 (Annexure P-12) for grant of exemption certificate but the same has not been granted. Thereafter, the petitioner sent reminder dated 28.4.2014 (Annexure P-13) but no action has so far been taken thereon.

3. Learned counsel for the petitioner submitted that the question of vires has also been assailed in this writ petition. But in case exemption certificate is granted, then the question of vires raised, shall be rendered academic.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No. 3 to take a decision on the application dated 5.3.2014 (Annexure P-12) followed by reminder dated 28.4.2014 (Annexure P-13) in accordance with law by passing a speaking order after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order. It is, however, clarified that the question of vires of provisions of Sections 6(7) and 39A of the Act is not being adjudicated upon at this stage and it shall be open to the petitioner to approach this Court again laying challenge to the vires of the aforesaid provisions in accordance with law, after the decision on the application (Annexure P-12) by the concerned authority, if occasion so arises.