(2010) 12 SHI CK 0357

In the High Court Of Himachal Pradesh

Case No : CWP No. 1980 of 2009

Amba Shakti Ispat Ltd. APPELLANT

Vs

State of H.P. and Another RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:
Himachal Pradesh Value Added Tax Act, 2005 — Section 11(3)

Citation : (2011) 183 ECR 343

Hon'ble Judges : Kurian Joseph, C.J;V.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—Challenge is on Annexure P-2 and Annexure P-4. Annexure P-2 is a notice issued u/s 11(3) of the H.P. VAT Act, 2005. The Petitioner was given an opportunity to submit reply and thus Annexure P-3, reply. Thereafter, the Assessing Authority passed Annexure P-4, order. According to the Petitioner, the Authority has pre-judged the issue in the notice itself and that can be seen from the direction to deposit the amount on account of dis-allowing the input tax credit. According to the Petitioner, under the statutory scheme, there is no such requirement of deposit of the amount at the stage of the notice. But the fact remains the reply Annexure P-3, was entertained and considered without the Petitioner depositing the amount as directed in the notice. Annexure P-4, order has thereafter been passed. The Petitioner has sought to challenge Annexure P-4, order on various grounds. The main grounds are that there is violation of the principles of natural justice in the sense that the order is not a speaking order, that the defences taken by the Petitioner in Annexure P-3, reply have not been considered by the Assessing Authority, that another Assessing Authority had passed Annexure P-1, order and the same view is not followed by the Assessing Authority who passed Annexure P-4, order at least in respect of a period covered by both orders, that there is no notice in the prescribed form, etc. It is submitted that this Court having admitted the Writ Petition, the same has to be considered on merits.

2. We are afraid, none of these contentions can be appreciated. The statute provides for the effective remedy to the Petitioner for appeal. If two contradictory stands have been taken by two different Assessing Officers, it is all the more a reason that the Appellate Authority under the statute should look into the matter, who in turn also exercises administrative powers over those Assessing Officers. In case, the Petitioner is not satisfied with the order passed by the appellate authority, there is a statutory Tribunal constituted under the Act. Still further, the Petitioner has the remedy before the High Court. The Appellate Authority has to look into all the grounds taken in the appeal including the grounds that some of the points urged by the Petitioner before the Assessing Authority have not been considered. In case any of the points urged by the Petitioner have not been considered by the Assessing Authority, the Appellate Authority has to consider all those aspects as well. True, there is a direction to deposit the amount. But the fact remains that the Petitioner has not deposited the amount. His reply was considered on merit without insisting for the deposit. Annexure P-2, therefore, has only the force of notice, nothing else. Annexure P-4, alone is the order passed by the Authority. We do not find that any prejudice has been caused to the Petitioner by not issuing a notice in the prescribed form, even assuming that there is force in the submission that the notice can be issued only in the prescribed form and not otherwise. Infact, Annexure P-2, notice is a reasoned notice and the Petitioner has submitted a reasoned reply and according to us, the Assessing Authority has passed a well reasoned order. It will not be also totally out of context to observe that the Petitioner has not taken any objection in Annexure P-3, reply that there is no notice in the prescribed form and on that account, the Petitioner has suffered any prejudice. Learned Counsel for the Petitioner submits that the notice itself is misconceived. Precisely, that is what the Petitioner sought to reply in Annexure P-3 and if that point has not been considered to the requirements under the law, it will be certainly open to the Petitioner to point out the same before the Appellate Authority and the Appellate Authority is bound to consider those contentions as well.

3. It is not invariably the requirement under law or convention that once the writ petition is admitted, the same should be considered on merit and that the same cannot be disposed of by relegating the party to pursue its statutory remedy. It all depends upon the facts of each case. The facts of the instant , particularly having gone through the detailed reply furnished by the revenue, in our view, involves various disputed factual aspects including the method of calculations. These are all matters for the statutory forum to consider, being factual aspects, at the first stage and not the High Court at the threshold.

4. In the above circumstances, this writ petition is dismissed without prejudice to the liberty to the Petitioner to pursue its statutory remedy. However, it is made clear that the time taken by the Petitioner in the writ petition before this Court will stand excluded in computing the period of limitation in filing the appeal

before the Appellate Authority.

5. The Writ Petition is dismissed, so also the pending application(s), if any.

