(2013) 03 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : VATAP No''s. 25 and 26 of 2013

Bhagwanpura Sugar Mills — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) 61 VST 358

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Anmol Rattan Sidhu and Ms. Rajni Narula, for the Appellant;

Judgement

1 This order shall dispose of the abovementioned two appeals as the common question of law and facts arises for consideration. For brevity, the facts are being taken from VAT Appeal No. 25 of 2012. Present appeal u/s 62 of the Punjab Value Added Tax Act, 2005 (for short, "the Act") arises out of the order passed by the Chairman, Value Added Tax, Tribunal, Punjab, Chandigarh on November 23, 2012. Vide the aforesaid order, the Tribunal directed the appellant to deposit 25 percent of the additional amount of tax, penalty and interest within period of 15 days from the date of receipt of the copy of the order.

2. In an appeal preferred by the appellant, the Deputy Excise and Taxation Commissioner (Appeals), Patiala directed the appellant to deposit 25 percent of the additional demand as per the order dated August 30, 2012. It is the said order which was challenged by way of an appeal before the Tribunal, which has been disposed of with the following findings;

In the result, the orders dated August 30, 2012 and September 14, 2012 are hereby set aside. The appellant-assessee is directed to deposit 25 percent amount of the tax, penalty and interest in view of Malwa Contracts Pvt. Ltd. v. State of Punjab [2010] 37 P and H Tax 53 (P & H) within 15 days from the date of receipt of the certified copy of this order and thereafter, he along with the proof of such deposit shall appear before the DETC (A), who will entertain the appeal, hear and decide the same on the merits within two months from the date of appearance of the appellant-assessee before him.

Before parting with this order, it deserves to be pointed out here that while issuing notice to the State vide order dated November 12, 2012, the appellant was burdened with costs Rs. 40,000 for filing the appeal before the DETC(A) without compliance of the statutory provisions of section 62(5) of the Act and then filing the appeal before this Tribunal. It is found that there was no sufficient ground available with the appellant-assessee to pose a challenge to the order dated August 30, 2012 of the DETC(A), by filing appeal before this Tribunal. Consequently, the cost of Rs. 40,000 imposed vide order dated November 12, 2012 passed by this Tribunal are liable to be recovered. For recovery of this amount, the Department shall take necessary steps. Accordingly, this appeal is disposed of.

3. The learned counsel for the appellant argued that section 62(5) of the Act was amended vide the Punjab Value Added Tax (Third Amendment) Act, 2011 (Act No. 26 of 2011), when the words "total amount of tax" were substituted with the words "total amount of additional demand". The amended provisions read as under:

(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five percent of the total amount of additional demand, penalty and interest, if any.

Explanation.--For the purposes of this sub-section ''additional demand'' means any tax imposed as a result of any order passed under any of the provisions of this Act or the Rules made thereunder or under the Central Sales Tax Act, 1956 (Act No. 74 of 1956).

4. The learned counsel for the appellant relies upon a Division Bench judgment of this court in CWP No. 18650 of 2009, Ahluwalia Contracts (I) Ltd. Vs. State of Punjab and Others, , decided on July 29, 2010, wherein it has been held that since, the writ petitioner has paid more than 25 percent of the amount, the view taken by the appellate authority that 25 percent should be worked out from the balance amount of tax due, cannot be accepted. Therefore, once the petitioner has paid more than 25 percent of the demand created, the order of the Tribunal calling upon the petitioner to pay 25 percent of the additional demand is not legally sustainable.

5. We do not find any merit in the arguments raised by the appellant. After the order was passed by this court on July 29, 2010, the Act has been amended so as to clarify 25 percent of the amount of tax, penalty and interest which is required to be deposited is of the amount of additional demand, i.e., the difference between the tax already deposited and the additional demand by the assessing authority. The ambiguity in the statute has been clarified by virtue of the amendment. Therefore, we do not find any error in the order passed by the Tribunal.

6. However, accepting the request for extension of time to deposit the amount of tax, interest and penalty, we grant another four weeks'' time from today to the appellants for the said purpose. Disposed of in the above terms.

