

(2000) 07 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8633 of 2000

C. Bhalla and Brothers

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-07-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 39, 39(5)

Citation : (2001) 123 STC 178

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.C. Dogra and Sushila Dogra, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This is a petition for quashing of the orders dated January 25, 2000, February 17, 2000 and June 13, 2000, passed by the Joint Excise and Taxation Commissioner (Appeals), Ambala (respondent No. 3) and the Sales Tax Tribunal, Haryana (for short, "the Tribunal") respectively.

2. A perusal of the record shows that vide order dated November 10, 1992, the Excise and Taxation Officer-cum-Assessing Authority, Yamunanagar (respondent No. 4) held the petitioner liable to pay additional tax amounting to Rs. 1,48,644 for the assessment year 1997-98 and Rs. 1,51,698 for the assessment year 1998-99. These orders were challenged by the petitioner by filing appeals under the Haryana General Sales Tax Act, 1973 (for short, "the State Act") and the Central Sales Tax Act, 1956 (for short, "the Central Act") along with applications u/s 9(2) of the Central Act and Section 39(5) of the State Act for grant of exemption from payment of the amount of tax on the premise that due to financial difficulties, it was unable to pay the amount and also on the ground that the orders passed by the Assessing Authority were ex facie illegal. The department opposed the request of the petitioner by asserting that the petitioner had running business with annual gross turnover of more than Rs. 80 lacs and its financial condition was very sound.

3. After considering the arguments of the parties, respondent No. 3 rejected the prayer of the petitioner for wholesome exemption but directed that the appeals be entertained subject to the condition that the appellant shall deposit of monthly instalments of Rs. 20,000 payable on 30th of each month and furnish surety bond up to February 29, 2000. The operative part of the order dated February 17, 2000, passed by the Appellate Authority reads as under :

"Now it is a settled law that the merits of the case cannot be considered at this stage. It is only the financial position of the applicant which is to be seen. The applicant is doing business in a normal way with annual gross turnover of Rs. 80 lacs which goes to establish that there is regular flow of funds and the business activities are being managed smoothly. The plea of the applicant that out of total investment of Rs. 12,89,900 applicant's own capital contribution is just Rs. 1,24,425 and that is why he is not in a position to pay the amount under dispute cannot be accepted. The payments in business are not made out of capital. If there is regular flow of funds such payments can be easily managed. Otherwise also in business, capital, the share of owner/partners are always found to be nominal. Business is run mainly on loan secured from various sources. So there is nothing abnormal with the applicant if he is having nominal capital in the business. Since it is clear that the applicant-firm is a running concern and he can pay the amount if not in lump sum, in easy instalments, I entertain the appeal subject to the condition that the applicant would deposit the amount in monthly instalments of Rs. 20,000 payable on 30th of each month and furnish surety bond up to February 29, 2000. Case to come up in due course."

4. The petitioner did not feel satisfied with the concession granted by the Appellate Authority and challenged the order dated February 17, 2000 before the Tribunal and reiterated its plea for grant of total exemption by pleading financial difficulties as the cause for its inability to pay the amount of tax. By the impugned order, the Tribunal confirmed the order passed by the Appellate Authority subject to the modification that the petitioner shall pay monthly instalments of Rs. 15,000 each.

5. Shri R.C. Dogra, Senior Counsel appearing for the petitioner, argued that the orders passed by respondent No. 3 and the Tribunal should be quashed because they have completely overlooked the illegalities committed by the Assessing Authority. He submitted that the case of the petitioner falls within the category of exceptional cases contemplated by the judgments of the Full Bench of this Court in *Emerald International Ltd. v. State of Punjab* [2001] 122 STC 382 ; 1997 (2) PLR 797 and of the Supreme Court in *State of Orissa v. Ion Exchange India Ltd.* [2000] 117 STC 436. He then argued that the impugned orders should be declared nullity because they do not satisfy the requirement of speaking order which is an integral part of larger concept of natural justice. Learned counsel submitted that the Appellate Authority and the Tribunal have not at all adverted to the evidence produced by the petitioner to substantiate its plea of financial incapacity and, therefore, rejection of its prayer for exemption should be

declared illegal. In the end, he submitted that if the court is not inclined to entertain the writ petition, then sometime may be allowed to the petitioner to deposit the amount in accordance with the order of the Tribunal.

6. In our opinion, none of the arguments urged by Shri Dogra merits acceptance. It is a settled preposition of law that while exercising power u/s 9(2) of the Central Act and Section 39(5) of the State Act, the appellate authority cannot delve deep into the issue of legality of order of assessment and application for exemption cannot be accepted simply because the appellant is able to show that the plea raised by it merits detailed consideration. In *Emerald International Ltd. Vs. State of Punjab and Others*, a Full Bench interpreted Section 20 of the Punjab General Sales Tax Act, 1948 and Section 39 of the State Act and laid down the following propositions :

"As a sequel to our discussion on the question of law referred to us the following conclusions can be deduced :

(a) The appeal is a creation of a statute and in case a person wants to avail of the right of appeal, he has to accept the conditions imposed by the statute.

(b) The right of appeal being a creature of statute, the Legislature could impose conditions for exercise of such a right. Neither there is a constitutional nor legal impediment for imposition of such a condition.

(c) The right of appeal is neither natural nor inherent attaching to a litigation and such a right neither exists nor can be assumed unless expressly given by the statute.

(d) Even if, this Court was to interpret the bare provisions of two statutes, i.e., the Punjab General Sales Tax Act, 1948 and the Haryana General Sales Tax Act, 1973, it could safely be held that there is a complete bar to the entertainment of an appeal by the Appellate Authority without the payment of tax amount unless the authority is satisfied that the dealer is unable to pay the amount so assessed and only in that situation the appellate authority for the reasons to be recorded in writing can entertain the appeal without deposit of the payment of such amount.

(e) Neither on the wording nor in view of the spirit of the Punjab and Haryana Acts it is possible to hold that the Appellate Authority should see the prima facie nature of the case while hearing the stay matter.

(f) The factum of tax assessed being illegal cannot be a relevant consideration for grant of stay by an Appellate Authority.

(g) The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India in rarest of the rare cases in the given facts and circumstances, can grant stay and waive the condition of pre-deposit of tax and the existing alternative remedy in such circumstances would be no ground to refuse interference."

7. In our opinion, the propositions (d), (e) and (f) provide complete answer to the petitioner's challenge to the order passed by respondent No. 3 and the Tribunal.

8. The decision of the Supreme Court relied upon by Shri Dogra relates to the jurisdiction of the High Court to stay the recovery of the tax, etc., and the observation made therein cannot be relied upon for determining the legality of an order passed by the Appellate Authority while deciding the application filed for exemption from payment of tax.

9. The argument of the learned counsel that the appellate order is vitiated due to non-consideration of the request of the petitioner for grant of exemption on account of financial incapacity is wholly devoid of substance. A bare perusal of the above extracted portion of the appellate order shows that respondent No. 3 has considered all the relevant factors and declined to entertain the petitioner's prayer for total exemption by observing that it had running business with substantial annual turnover. The Tribunal has expressed its concurrence with the appellate order and we see no reason to take a different view.

10. For the reasons mentioned above, the writ petition is dismissed. However, we accept Shri Dogra's request and grant two months time to the petitioner to comply with the direction given by the Tribunal. This would mean that if the petitioner deposits the amount of tax within stipulated period then the Appellate Authority shall hear its appeal on merits.