(2006) 04 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Cobra Instalaciones Y. Services APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 12(3)

Citation : (2007) 5 VST 109

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner has approached this Court with the following substantive prayers:

(a) refund forthwith the amount of Rs. 2 lacs to the petitioner deposited by it at the time of entertainment of the appeal, after declaring its retention by the respondents as illegal with effect from November 21, 2001 (annexure P 3), the date when the order was passed by respondent No. 3 ; and

(b) simultaneously, pay interest thereon as provided u/s 12(3) of the Punjab General Sales Tax Act, 1948 with effect from November 21, 2001 (annexure P 3), the date when the order was passed by respondent No. 3, till its refund by the respondents; and.

2. As stated in the petition, the petitioner is a Spanish Mercantile Company. During the year 1995-96, it was awarded two distinct and separate contracts by M/s. Power Grid Corporation of India Ltd., New Delhi, for supply of electric transmission towers in knocked down condition. The sales tax assessment for the year in question was framed by the Assessing Officer under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter referred as "the Act") vide order dated December 18, 1998 and a demand of Rs. 1,91,89,748 was raised against the petitioner towards tax and penalty. Aggrieved against the order of assessment, the petitioner approached the Deputy Excise and Taxation

Commissioner (Appeals), Jalandhar Division, Jalandhar, who directed the petitioner to deposit the entire amount before it''s appeal could be entertained for hearing on merits. Against this order the petitioner approached the Tribunal who vide order dated April 24, 2000 directed the respondents to entertain the appeal of the petitioner on payment of a sum of Rs. 2 lacs by May 29, 2000. In compliance thereof the petitioner deposited the above amount on May 10, 2000. Thereafter, the appeal of the petitioner was heard on merits.

3. Vide order dated November 21, 2001, the appeal filed by the petitioner was accepted by the Deputy Excise and Taxation Commissioner (Appeals) and the case was remitted back to the assessing authority for reconsideration. Still aggrieved against the order passed by the Deputy Excise and Taxation Commissioner (Appeals), the petitioner approached the Tribunal, who upheld the order passed by the Deputy Excise and Taxation Commissioner (Appeals) and directed that the assessment of the petitioner be framed ab initio and the assessing authority was further directed to complete the assessment of case within two months.

4. Thereafter the assessing authority concluded the remand proceedings vide order dated May 5, 2003 by raising no demand on account of tax but only levied a penalty of Rs. 10,000 for technical violation u/s 23 of the Act. The additional demand of Rs. 10,000 created against the petitioner on account of levy of penalty was also deposited by him. When in spite of requests made by the petitioner, the refund of Rs. 2 lacs, deposited by the petitioner as pre-condition for hearing of appeal, was not granted, the petitioner approached this Court by way of present petition.

5. It is admitted that after filing of the present petition in this Court, the respondents have granted the refund amount of Rs. 2 lacs by passing an order dated February 3, 2006, copy annexure R-I. However, statutory interest payable to the petitioner on account of delayed issue of refund voucher was not paid. Under these circumstances the only relief pending in the writ petition is with regard to award of statutory interest to the petitioner.

6. While making submissions on the issue of awarding interest, the petitioner submitted that it is entitled to payment of interest on the amount deposited by him as pre-condition for entertainment of appeal from the date the appeal of the petitioner was accepted by the Deputy Excise and Taxation Commissioner (Appeals) till the amount was refunded, because it is on that date the demand raised against the petitioner was set aside and the matter was remitted back. The petitioner has relied upon a series of judgments of this Court on the issue, namely : Saurabh Kumar & Bros. v. State of Punjab [2002] 127 STC 556(SC), Sutlej Industries Limited v. State of Punjab [2001] 121 STC 552(SC) and C. W. P. No. 17062 of 2004 decided on July 12, 2005 Jai Bharat Trading Co. Vs. State of Punjab and Others, . The relevant para of a division Bench judgment of this Court in Saurabh Kumar and Bros. Vs. State of Punjab and Others, is extracted below:

9. We are not very happy with the manner in which the Excise and Taxation Department is treating the assessees. Despite written requests no action is being taken. In the present case, the appellate authority had passed the order on November 26, 1997. The case was remanded to respondent No. 3. For more than 3 1/2 years no order was passed. The petitioner''s request for refund of money had fallen on deaf ears. Even the main case was not decided. After the petitioner approached this Court the respondents have passed this order by which penalty has again been imposed. While the petitioner would be entitled to seek its remedy against the order of penalty passed on June 25, 2001 (the learned Counsel states that the order had not so far been served on the petitioner), the amount of Rs. 50,000 deposited by the petitioner had remained with the respondents during the period from November 26, 1997 onwards. This had to be refunded. The respondents having failed to do so, the petitioner is entitled to the payment along with interest as admissible u/s 12 of the Punjab General Sales Tax Act, 1948.

7. The principles laid down in other two judgments, referred to by the petitioner, are that on account of delayed refund of amount, the assessee is entitled to payment of interest statutorily payable u/s 12 of the Act. The petitioner has also referred to a division Bench judgment of this Court in Punjab State University Text Book Board Vs. State of Punjab and Others, wherein it is held that the claim of refund cannot be rejected on the ground that the application for rectification moved by the department was pending before the concerned authority and it was directed therein that the petitioner was entitled to refund along with statutory interest thereon.

8. The petitioner has also referred a judgment of the honourable Supreme Court of India in the case of Philips India Ltd. v. Assistant Commissioner, Commercial Taxes, Calcutta [2004] 136 STC 636(P&H), which though not on the issue of refund, to state that once an original assessment is set aside and matter is referred back to the Assessing Officer for re-computation, the original assessment order ceases to exist and the assessee is liable to pay interest only from the date when a fresh demand notice is issued after the re-computation is done after remand and not for the period prior to raising of fresh demand. Relying upon this binding principles of law, the contention of the petitioner is that it should be awarded interest from the date of order of Deputy Excise and Taxation Commissioner (Appeals) who had accepted the appeal of the petitioner setting aside the demand while remitting the case back for passing fresh order.

9. On the other hand Sh. Amol Rattan Singh, learned Additional Advocate- 9 General appearing for the State did not dispute that the department is liable to pay statutory interest to the petitioner on account of delayed issue of refund voucher but contested the claim to the extent that the petitioner is not entitled to interest from the date the Deputy Excise and Taxation Commissioner (Appeals) accepted the appeal of the petitioner and remitted the case back but from a date when the assessing authority decided the remand case on May 5,

2003 holding therein that there is no tax liability as it is on that date that the issue of levy of tax was finally settled. The contention of the State counsel though seems to be attractive at first blush but the same is not in conformity with settled principles of law as referred to above.

10. In view of our above discussions and keeping in view the binding 10 precedents cited by the learned Counsel for the petitioner, which could not be controverted by the learned Additional Advocate-General, we direct the respondents to pay interest to the petitioner from November 21, 2001 when the demand was set aside and the case was remitted back till the amount was refunded to the petitioner, in terms of Section 12 of the Act.

11. The writ petition is allowed on the above terms with no order as to 11 costs.

