(1996) 08 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18033 of 1995

Continental Electric Store — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 20-08-1996

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

Citation : (1996) 114 PLR 494

Hon'ble Judges : N.K. Aggarwal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.K. Jhingan and Avneesh Jhingan, for the Appellant; Parmod Goyal, DAG, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorari quashing the order of the Sales Tax Tribunal, Haryana (hereinafter referred to as ''the Tribunal''). Annexure P-2, directing the petitioner to deposit a sum of Rs. 3 lacs within one month of the receipt of the order and furnishing of surety bond for the remaining amount as a condition precedent for hearing the appeal on merits.

2. Petitioner is engaged in the business of trading in electrical goods and electrical appliances at Faridabad. He is a registered dealer under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as ''the Act''), having Registration Certificate No.1300263. For the assessment year 1990-91, he filed four quarterly returns and deposited a tax of Rs. 80,791.00. Regular assessment proceedings were taken up by the assessing authority by issuing a statutory notice u/s 28(2) of the Act. However, subsequently, the assessing authority converted these proceedings u/s 28-B of the Act and finalised the best judgment assessment by making an addition of Rs. 26,80,000.00 to the turnover and levied a tax of Rs. 9,00,674.00, in cluding penalty u/s 48 of the Act, vide its order dated 7.5.1994, passed u/s 28-B of the Act, petitioner filed an appeal

along with an application u/s 39(5) proviso of the Act for waiver of the condition to deposit the amount of tax and penalty demanded This petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorari quashing the order of the Sales Tax Tribunal, Haryana (hereinafter referred to as ''the Tribunal''). Annexure P-2, directing the petitioner to deposit a sum of Rs. 3 lacs within one month of the receipt of the order and furnishing of surety bond for the remaining amount as a condition precedent for hearing the appeal on merits.

3. We have heard the counsel for the parties.

4. Earlier, the first appellate authority had waived off the condition of pre-deposit of tax before hearing the appeal on merits, taking into consideration the inability of the petitioner to pay the tax. Before the Tribunal also, the application for hearing the appeal on merits without insisting upon prior deposit of tax was filed on the ground of petitioner''s inability to pay the tax. Tribunal noticed the fact that the first appellate authority had heard the appeal without insisting upon prior payment of tax demanded and, thereafter, passed the order asking the petitioner to deposit the sum of Rs. 3 lacs as a condition precedent before hearing the appeal on merits. Tribunal did not advert to the fact regarding the financial condition of the petitioner or his ability or inability to pay the tax demanded. Tribunal did not record a finding that the financial position of the petitioner had improved after the decision of the first appellate authority and that the petitioner was now in a position to deposit the tax. No reasons have been given why the earlier decision given by the first appellate authority of hearing the appeal without insisting upon prior deposit of tax be departed with. In the absence of the same, it would be presumed, on the basis of the findings recorded by the first appellate authority, that the petitioner was unable to deposit the tax.

5. In this petition as well, it has been averred that the petitioner is in a very tight financial position and is not in a position to deposit the tax, even excluding the penalty, because the daughter of the sole proprietor Prem Gupta was suffering from serious kidney problem (shrinkage of kidneys), for which she had to be kept admitted in various hospitals including Holifamily Hospital, Escorts Hospital and Medical Centre, Faridabad and the All India Institute of Medical Sciences, New Delhi and that the petitioner had to incur very heavy expenses and withdraw liquid assets from the business. Inspite of best efforts, the daughter of Prem Gupta died on 21.11.1995 and the petitioner was not able to improve the position of his business.

6. Keeping in view of fact that the condition of pre-deposit of tax was waived off by the first appellate authority on the ground of inability of the petitioner to deposit the tax demanded and non recording of any finding by the Tribunal that the petitioner had improved its financial position between the intervening period, we set aside the order, Annexure P-2, passed by the Tribunal and direct the Tribunal to hear the appeal and dispose of the same on merits without insisting on the condition of pre-deposit of the amount of tax and penalty demanded from

the petitioner.

7. The writ petition stands allowed. Parties, through their counsel, are directed to appear before the Tribunal on 10.9.1996. No costs.

