(2012) 01 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : CWP No''s. 12544 and 14972 of 2011

Dashmesh Traders APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 41(1), 51(10)

Citation : (2013) 57 VST 289

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Sudeepti Sharma, D.A.G., Punjab, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of CWP Nos. 12544 and 14972 of 2011 as these have been filed by the same assessee and are interconnected. Briefly, the facts may be noticed. The assessee-petitioner through CWP No. 12544 of 2011 is seeking issuance of a writ in the nature of mandamus directing the respondents to refund penalties of Rs. 2,70,800 and Rs. 2,95,903 taken as cash security for the release of goods. The order imposing the penalty was set aside by the appellate authority. The assessee was held entitled to claim of the refund along with interest. Reliance was placed upon section 51(10) of the Punjab Value Added Tax Act, 2005 (in short, "the Act").

2. During the pendency of the aforesaid writ petition, in the reply filed by the respondents, a copy of order dated June 24, 2011 had been appended wherein the amount was sought to be withheld by taking recourse of section 41(1) of the Act. On the basis, of the order dated June 24, 2011, the amount of refund was withheld by annexure P5 dated July 22, 2011. The petitioner thereafter challenged the said order dated July 22, 2011 by filing CWP No. 14972 of 2011 on the ground that the ingredients of section 41(1) of the Act were not fulfilled.

3. The learned counsel for the petitioner submitted that the State was not justified in withholding the refund and passing order dated July 22, 2011

(annexure P5 in CWP No. 14972 of 2011) as the essential ingredients, i.e., filing of an appeal and that the interest of the revenue was to be safeguarded by withholding has not been recorded in the said order. Learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this court in Jai Bharat Trading Co., Near Anaj Mandi, Kapurthala through one of its partners Jai Bharat Trading Co. Vs. State of Punjab and Others, in support of his submission.

4. On the strength of the submissions made above, prayer was made for quashing of the order, annexure P5.

5. The learned State counsel, however, supported the order passed by the authorities and stated that the refund of the amount has already been made and even the interest has been allowed.

6. After giving our thoughtful consideration to the respective submissions of learned counsel for the parties, we find that the order withholding the refund, annexure P5 in CWP No. 14972 of 2011, is contrary to the settled principles enunciated by this court in CWP No. 19172 of 2006 Ratti Woollen Mills Vs. State of Punjab and Others, decided on February 1, 2007.

7. It would be advantageous to refer to section 41(1) of the Act which reads thus:

41. Power to withhold refund in certain cases.--(1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the officer competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such officer may, with the previous approval of the Commissioner, withhold the refund till such time, as may be determined.

(2)...

8. This court considering the scope of section 41(1) of the Act in the aforesaid case has laid down as under (page 108 in 9 VST):

After hearing learned counsel for the parties, we find that the respondents have no right to retain the aforementioned amount in the absence of any finding that the refund would adversely affect the recovery as per the provisions of section 12(6) of the 1948 Act. The reliance of the respondents on the order dated December 6, 2006 (R1), passed u/s 12(6) of the 1948 Act is wholly misplaced because the aforementioned order lacks complete application of mind and the primary requirements of section 12(6) of the 1948 Act remains unsatisfied. The aforementioned provision is reproduced hereunder for ready references:

Where an order allowing refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose order shall be final.

A perusal of the aforementioned provisions shows that power to withhold refund could be exercised in cases where appeal or further proceedings under the 1948 Act are pending and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery then refund may be withheld and the case be referred to the Commissioner whose order is to be considered final. The order withholding refund is blissfully silent as to how the refund would adversely affect the recovery. The order is absolutely laconic. There is not even a whisper of the material on the basis of which satisfaction has been recorded by the Commissioner. Accordingly, the same cannot be sustained in the eyes of law nor can the same be relied upon for the purpose of defeating the claim of the petitioner.

9. The respondents while withholding the amount u/s 41(1) of the Act had nowhere recorded any satisfaction that the withholding of the refund was in the interest of the Revenue. As the legal requirements as envisaged u/s 41(1) of the Act are not satisfied, CWP No. 14972 of 2011 is allowed and order dated July 22, 2011 (annexure P5) is quashed.

10. Now, the question which remains for consideration is that once order withholding refund had been held to be illegal, whether the State was justified in not granting refund to the petitioner.

11. In the absence of any valid sanction authorizing the State to retain the amount which had been deposited by the petitioner as cash security, the State was duty-bound to refund the same when the appeal had been decided in favour of the petitioner. The only conclusion that follows is that the amount which was withheld by the respondent was beyond jurisdiction. Once that is so, the assessee was entitled to refund along with interest after the expiry of the period of 60 days from the date the appellate authority decided the appeal in favour of the petitioner, i.e., August 31, 2010. As per stand of the State, the amount has already been released to the petitioner. Under the circumstances, CWP No. 12544 of 2011 is disposed of by directing the State to pay the interest on the amount of refund in accordance with law within two months from the date of receipt of a certified copy of the order. A photo copy of this order be placed on the file of the connected case.