(1998) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 12079 of 1998

D.R. Foods Limited — APPELLANT

Vs

State of Haryana and another — RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 28B

Citation : (1998) 08 P&H CK 0033

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

Bench : Division Bench

Judgement

G.S. Singhvi, J.—This is a petition to restrain the respondents from making recovery of tax from the petitioner in pursuance of the orders, annexures P1, P2 and P5 passed respectively by the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Kamal and the Joint Excise and Taxation Commissioner, Ambala.

2. Shortly stated, the facts of the case are that the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Kamal provisionally assessed die petitioner for the period from April 1, 1997 to July 6, 1997 u/s 28-B of the Haryana General Sales Tax Act 1973 read with the provisions of the Central Sales Tax Act, 1956. He also imposed penalty upon the petitioner requiring it to pay tax and penalty amounting to Rs. 2,75,473. The petitioner filed appeals against the orders passed by the Assessing Authority. It also applied for grant of exemption from payment of tax and penalty as a condition precedent to the hearing of appeal. By an order dated April 21, 1998 the Joint Excise and Taxation Commissioner (Appeals), Ambala rejected the applications of the petitioner for grant of exemption. This order is subject-matter of appeal which the petitioner has filed before the Sales Tax Tribunal, Haryana along with an application for grant of exemption from payment of tax and penalty.

3. The grievance of the petitioner is that even before the decision of the application filed by it for grant of exemption, the respondents have initiated

process of recovery of tax and penalty by use of coercive methods. Learned counsel relied on the judgment of this Court in Indian Oil Corporation Limited v. Excise and Taxation Officer-cum-Assessing Authority [1995] 96 STC 90 and urged that the respondents should not be allowed to forcibly recover the amount of tax and penalty till the decision of the application filed by the petitioner before the Tribunal. Shri Goyal invited our attention to the fact that the Appellate Authority has not been able to hear and decide the application filed by the petitioner for last about 2 months and yet the Assessing Authority has, with the avowed object of effecting recovery of tax and penalty, attached the trolley of the petitioner and threatened it with the closure of business by locking the premises.

4. We have thoughtfully considered the submission of the learned counsel and agree with him that the respondents cannot use forcible methods for recovery of tax and penalty till the application filed by the petitioner for grant of exemption from payment of tax, etc., is heard and decided by the Tribunal. In the case relied upon by Shri Goyal, the court, after examining a similar issue, restrained the respondents from using coercive methods to effect the recovery of tax till the decision of the application similar to the one filed by the petitioner before the Tribunal. Some of the observations made in that decision, which have direct bearing on the point raised in this petition are :

"In somewhat similar type of cases, we have come across notices issued by the departmental authorities to the parties for realisation of the tax in terms of the order of assessment even when the appeal filed by the aggrieved party is pending before the Tribunal and request made by it for grant of interim relief has not been adjudicated upon. This methodology adopted by the departmental authorities cannot at all be appreciated. Once the statute provides a remedy of appeal, the party has every right to avail that remedy and there is no justification for the Assessing Authority to use coercive methods for realisation of the tax even when the appeal filed by the aggrieved party is pending and the Tribunal has not been able to apply its mind to the request made by the appellant before it for grant of interim relief. It may be a different thing where a party after filing the appeal adopts dilatory tactics for delay in the decision of the appeal after getting a stay. However, in the ordinary circumstances it is wholly unjust for the Assessing Authority or the departmental authorities to make a post-haste effort for the recovery of tax by use of coercive methods.

Having regard to the totality of the circumstances and particularly the fact that the petitioner happens to be a Government of India undertaking, we direct the Sales Tax Tribunal to hear and decide the appeal filed by the petitioner at the earliest. It shall also he the duty of the Sales Tax Tribunal, Punjab, to consider and decide the application filed by the petitioner for entertaining the appeal without payment of tax and for staying the recovery of tax in terms of the assessment order. Till then, the Assistant Collector, I Grade-cum-Excise and Taxation Commissioner, Ward No. 8, Jalandhar-I and other authorities of the department are restrained from making recovery from the petitioner on the basis of notice issued to the petitioner. They are also directed not to initiate proceedings against the petitioner under the Land Revenue Act, 1887, for the purpose of making recovery of the tax."

5. Applying the ratio of that decision, we dispose of this petition with the direction that the respondents shall not use coercive methods for recovery of amount of tax and penalty from the petitioner till the decision of the application filed by it before the Tribunal for exemption. We hope and trust that the learned Tribunal will within 3 weeks of the date of hearing which is reported to be August 11, 1998 decide the application filed by the petitioner.

6. A copy of this order be given dasti to the petitioned on payment of the fees prescribed for urgent application. The Bench Secretary is also directed to give a copy of the same to the learned Deputy Advocate-General, Haryana for being forwarded to the concerned Sales Tax Tribunal.

7. Petition allowed.