(2015) 09 P&H CK 0361

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14728 of 2015

ESS EMM Metal Works APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Value Added Tax Act, 2005 — Section 29

Citation : (2015) 09 P&H CK 0361

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Avneesh Jhingan, Advocate, for the Appellant; Jagmohan Bansal, Addl. A.G., for the Respondent

Judgement

Ramendra Jain, J.—Through the instant petition under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the assessment order dated 31.03.2015 (Annexure P-2) passed by the Assessing Authority, Jalandhar-II.

2. The petitioner, a partnership firm registered under the Punjab Value Added Tax, Act, 2005 (in short ''the Act'') and Central Sales Tax Act, 1956 filed its statutory return for the assessment year 2012-13. The Assessing Authority initiated assessment proceedings. Accordingly, notices were issued to it at its business premises, not functional on account of closing down its business activity.

3. As per the petitioner, it never received any notice, but despite that during pendency of the proceedings, on one date, presence of one Mr. Roshan Lal, showing himself to be the Accountant of the petitioner was wrongly marked by the Assessing Authority, because, he never remained its employee and thus, had no connection whatsoever with him. Finally, without serving any notice, the respondent No. 2 passed ex parte assessment order dated 31.03.2015 (Annexure P-2) wrongly and illegally, disallowing the Input Tax Credit (ITC) on account of non-production of account books and its original VAT invoices. The

Assessing Authority also rejected some of the Input Tax Credit (ITC) on the ground that the alleged purchases were made from the cancelled dealer and wrongly and illegally created a demand of Rs. 1,41,29,588/- including penalty of Rs. 90,57,048/- and interest of Rs. 5,43,486. The said assessment was framed in violation of principles of natural justice without serving any notice and following the procedure laid under Rule 86 of Punjab Valued Added Tax Rules, 2005. Though the residential address of the petitioner-firm was also available with the Assessing Authority, but no efforts were made to serve it on the same. Even otherwise, the assessment order was not speaking one as was being passed without application of mind, because total purchases of the petitioner were to the tune of Rs. 1.33 crores, but the Assessing Authority had rejected ITC on the purchases of Rs. 33.99 crores. The petitioner was in possession of all the original tax invoices which can be even now produced on affording an opportunity. Payments to the sellers were made through banking channels and hence, the subsequent cancellation of their Registration Certificate, if any, could not be made the basis of rejection of ITC. Penalty of 200% was imposed without recording any reason and thus, the same was also illegal.

4. In response thereto, learned counsel for the State in its reply pleaded the legality and validity of the assessment order dated 31.03.2015 (Annexure P-2), alleging that the petitioner was playing hide and seek with the respondent-department to avoid tax liability. The petitioner was served with a notice dated 26.09.2014 under Section 29 of the Act, which was duly received by its Accountant Mr. Roshan Lal Sharma, who appeared on 28.10.2014, before the Assessing Authority and submitted a request letter seeking time for rendering explanation. However, thereafter no one appeared on behalf of the petitioner with the ulterior motive to avoid tax liability and thus, on this compelling reason, the assessment order dated 31.03.2015 (Annexure P-2) was passed ex parte.

5. We have given our thoughtful consideration to the matter.

6. Undisputedly, the assessment order (Annexure P-2) has been passed ex parte by the Assessing Authority, Jalandhar-II, holding total tax liability of the petitioner-firm to the tune of Rs. 1,41,29,588/-. The stand of the petitioner-firm is that no notice was ever served to it, before passing the impugned order. Mr. Roshan Lal Sharma, its alleged Accountant was never employed by it and, therefore, it does not lie in the mouth of the respondent-department that the petitioner-firm was represented by him before the department on one date. The petitioner has averred that it has in its possession, all the original tax invoices, which can be produced on demand. Thus, in the fitness of the things and in the interest of justice, it would be appropriate that the petitioner should be afforded an opportunity to put forward its case, before the relevant Assessing Authority along with documentary proof, if any, in its possession so as to enable the Authority to pass an appropriate and legal order.

7. In view of the discussion above, the present writ petition is hereby allowed and the matter is referred back to the respondent No. 2-Assessing Authority, by

setting aside the assessment order dated 31.03.2015 (Annexure P-2), for passing a fresh order after affording an opportunity of hearing to the petitioner in accordance with law. The petitioner-firm or its authorized representative shall appear before the Assessing Authority at 11 a.m. on 05.10.2015. However, it is made clear that in case of non-appearance of the petitioner or its authorized representative before the Assessing Authority on the aforesaid time and date, it shall be competent to proceed it ex parte and to pass the assessment order.

