(2001) 03 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3475 of 2001

Jay Vee Rice and General Mills — APPELLANT

Vs

Excise and Taxation Officer-cum-Assessing Authority and Another — RESPONDENT

Date of Decision : 08-03-2001

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

Citation : (2001) 122 STC 633

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

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant;

Judgement

G.S. Singhvi, J.

1.This is a petition for quashing of the notice dated February 15, 2001. Notice issued by the Excise and Taxation Officer-cum-Assistant Collector, IInd Grade, Ambala City, u/s 72 of the Land Revenue Act, 1887 (for short, "the 1887 Act") for recovery of the amount of tax allegedly due from the petitioner under the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act").

2. A perusal of the record shows that after issuing notice to the petitioner in form S.T. 25, the Excise and Taxation Officer-cum-Assessing Authority, Ambala City (respondent No. 1), passed order dated March 9, 1999, vide which he held it liable to pay Rs. 2,85,287 as the dues of tax. The petitioner challenged that order by filing an appeal u/s 39(1) of the 1973 Act which was dismissed by the Joint Excise and Taxation Commissioner (Appeals), Ambala City. The second appeal filed by the petitioner u/s 39(2) of the 1973 Act along with an application for exemption from payment of tax is pending before the Sales Tax Tribunal, Haryana (for short, "the Tribunal").

3. The petitioner''s grievance is that due to the Government''s failure to issue notification u/s 4 of the 1973 Act authorising Shri Prem Prashant to act as

Member of the Tribunal, the application for exemption filed by it is not being decided and by taking advantage of this situation, respondent No. 1 who is also exercising the power of the Assistant Collector, IInd Grade and the Deputy Excise and Taxation Commissioner, Ambala (respondent No. 2), have initiated coercive steps for recovery of the amount specified in the order dated March 9, 1999 and for cancellation of the exemption certificate.

4. After perusing the averments made in the petition, we asked Shri Jaswant Singh, learned Deputy Advocate-General, Haryana, to accept the notice on behalf of the respondents and state as to why respondent No. 1 may not be restrained from enforcing the recovery of tax in pursuance of the impugned notice. The learned Deputy Advocate-General stated that the Government is taking steps to issue appropriate notification for making the Tribunal functional and submitted that as soon as that happens, the application filed by the petitioner for exemption shall be taken up for consideration.

5. In our opinion, the respondents cannot take advantage of the situation created on account of non-functioning of the Tribunal and take coercive steps for enforcing the recovery of tax in terms of the demand created by respondent No. 1 or for cancellation of the exemption certificate and the only proper course for them is to await the decision of the application filed by the petitioner for exemption from payment of tax.

6. Hence, the writ petition is disposed of with the direction that respondents Nos. 1 and 2 shall not take action in furtherance of notices dated February 15, 2001 and March 2, 2001 till the application filed by the petitioner for exemption from payment of tax in terms of Section 39(5) of the 1973 Act is disposed of by the Tribunal.

7. Attested copies of this order be given to the learned Deputy Advocate-General and the counsel for the petitioner.