

(1995) 07 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No. 921 of 1994

K.P.S. Industries

APPELLANT

Vs

Appellate Tribunal Sales and Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 34 DRJ 342

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Geeta Mittal and J.R. Goel, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This writ petition pertains to the question of pre-deposit to be made by the assessee/petitioner under the provisions of Delhi Sales Tax Act and the Central Sales Tax Act relevant to the assessment year 1988-89. The Assessing Authority by his assessment order dated 31.3.1993 assessed the petitioner to Sales Tax to the tune of Rs.20,09,940.60. The Assessing Authority further imposed an interest on the aforesaid amount to the extent of Rs.16,07,952.40 and penalty of Rs.4,000.00 . Accordingly, the total demand raised against the petitioner towards sales tax relevant to the assessment year 1988-89 was to the tune of Rs.36,21,893.00 .

(2) Being aggrieved by the aforesaid order of assessment the petitioner preferred an appeal before the Additional Commissioner, Sales Tax, Delhi. The appellate court admitted the aforesaid appeal subject to the petitioner depositing a sum of Rs.4,00,000.00 and Rs.4,000.00 as a condition precedent for the entertainment of the aforesaid appeal. The petitioner, Thereafter filed an appeal before the Appellate Tribunal Sales Tax, Delhi seeking for settings aside of the aforesaid pre-condition of deposit for hearing of the appeal. In the meantime the assessing Authority passed a rectification order with regard to the assessment of

the petitioner wherein the demand against the petitioner towards the sales tax for the assessment year 1988-89 was enhanced to Rs.1,46,21,766.00 under the Delhi Sales Tax Act and Rs.7,400.00 under the Central Sales Tax Act. In the rectification order it was mentioned that due to inadvertent calculation and arithmetic mistake the figure given earlier was wrong and assessed the petitioner as above.

(3) The Appellate Tribunal took up for consideration the appeal filed by the petitioner seeking to set aside the condition of pre-deposit for hearing of the appeal and after hearing the counsel for the practice and on consideration of the record held that the condition imposed for hearing of the appeal filed by the petitioner is just and reasonable and accordingly, he dismissed the appeal. It was however, directed by the Tribunal that the first appellate court would not review its previous order imposing the condition in light of the rectification order. The petitioner was directed to comply with the condition imposed by the first appellate Court by 30.12.1993.

(4) The petitioner being aggrieved by the aforesaid order passed by the Tribunal dismissing the appeal has preferred the present writ petition wherein notice was issued by this court on 21.2.1994. In the connected stay application numbered as C.M. 1464/1994 this court directed that on petitioner depositing Rs.50,000.00 within 2 weeks there would be stay of recovery. From the subsequent orders passed by this court it appears that the aforesaid amount of Rs.50,000.00 was deposited by the petitioner.

(5) Ms. Geeta Mittal, learned counsel appearing for the petitioner submitted that before the Assessing Authority the petitioner submitted a complete list of sales to the registered dealer Along with the declaration and that the petitioner also produced the books of accounts before the Assessing Authority. Learned counsel further submitted that only for sale of about Rs.6,36,979.12 were not covered by the statutory forms and declaration and if the said facts are taken note of the tax computable on the same would come to a maximum of Rs.44,525.53 and the petitioner having already deposited an amount of Rs.50,000.00 in pursuance of this court's order the balance amount directed to be deposited as a pre-condition for the hearing of the appeal is required to be waived.

(6) We have heard the learned counsel appearing for the respondents, who submitted before us that subsequent to the earlier assessment order take Assessing Authority has passed a rectification order by which assessment of sales tax in respect of the petitioner has been. determined at Rs.1,46,21,766.00 under the local Act and Rs.7,400.00 under the Central Act. The learned counsel for the respondents further submitted that ST-35 forms had not been received for the value of Rs.1.72 Crores. He further submitted that the petitioners did not produce any books of accounts in support of his claim regarding the statement that the demands are -covered by ST-35 forms.

(7) From the aforesaid submissions made by the counsel for the parties and on

going through the records we find that there is a disputed question of fact involved in the present case - as to whether the petitioner had in fact produced the books of accounts before the Assessing Authority or not, in support of its claim that it is entitled to get the benefit of ST-35 forms which were allegedly submitted. In our opinion the Appellate Authority is the proper forum to go into, consider and decide such disputed questions of fact. On record we Find that the petitioner has not even participated in the assessment proceedings before the Assessing Authority for the subsequent assessment years also. It appears from record that the assessment for the assessment years 1989-90, 1990- 91 and 1991-92 have all been completed ex parte and the huge demands are payable by the petitioner. We also cannot come to any conclusion at this stage on the disputed question of fact as to whether all these statutory declaration forms, books of accounts and sale vouchers were produced or not before the Assessing Authority to support the deductions claimed before the Assessing Authority. We leave it to the Appellate Authority to come to a Finding in that regard as and when the appeal is decided on merits.

(8) In our view the impugned orders passed by the respondent No.1 & 2 are discretionary orders to be made by the authorities. Section 43(5) of Delhi Sales Tax" Act provides that in the absence of any order by the Appellate Authority granting exemption of deduction of the amount to be paid, the entire amount shall have to be paid before an appeal is entertained. In the present case the Appellate Authority has considered the record of the case and upon such consideration directed for deposit of Rs.4,00,000.00 and Rs.4,000.00 towards pre-deposit as a condition precedent for the hearing of the appeal. In our opinion, there is nothing arbitrary nor any unreasonableness in the aforesaid orders and the discretion vested in the authorities, has been exercised judicially, on consideration of the record. 9. It is not the duty of this court while exercising extraordinary powers vested in this court under Article 226 of the Constitution of India to sit as a court of appeal on the impugned orders so as to examine the entire facts and circumstances of the case including the disputed questions of fact at this stage or to substitute its own wisdom for the discretion vested by law on the Appellate Statutory Authority. In view of the aforesaid reasoning we dismiss this writ petition but without any costs. On the facts and circumstances of the case, however, we direct that the petitioner shall deposit the balance amount towards pre-deposit as a condition precedent for hearing of the appeal within 4 weeks from today, and till then its appeal shall not be dismissed for noncompliance.