(2014) 05 P&H CK 0498

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 259 of 2014

M/s. Dhani Ram Ram Chander — APPELLANT

Vs

The State of Haryana and Others — RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Value Added Tax Act, 2003 — Section 17, 19, 34

Citation : (2014) 76 VST 485

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Avneesh Jhingan, Advocate for the Appellant; Tanisha Peshawaria, DAG, Haryana, Dr. Laxmi Narayan Kharian, DETC and Ms. Santosh Chaudhry, ETO, Hissar, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner prays for quashing the rectification order dated 6.11.2013, Annexure P. 12. Direction has also been sought to the respondents to issue refund of Rs. 23,50,246/- due as per the assessment order dated 29.3.2013, Annexure P. 3 alongwith interest.

2. A few facts relevant for the decision of the controversy involved, as narrated in the petition, may be noticed. The petitioner is a registered dealer under the Haryana Value Added Tax Act, 2003 (in short, "the Haryana VAT Act") as also under the Central Sales Tax Act, 1956 (in short, "the CST Act") and a works contractor undertaking government as well as non government contracts. For the assessment year 2009-10, the petitioner undertook various contracts and also acted as a sub contractor for M/s. D.S. Constructions Limited, Gurgaon (DSC). The contractees and the contractor deducted TDS/WCT and deposited the same. The dealer filed quarterly and annual returns according to which the petitioner was entitled to refund. During assessment proceedings for the assessment year 2009-10, the assessing authority verified the payment of TDS made by the contractor and contractees from Deputy Excise and Taxation Commissioner,

Gurgaon (East) (DETC) vide letter dated 4.2.2013, Annexure P. 2. The assessing authority finalised the assessment and the petitioner was found entitled to refund of Rs. 23,50,246/-. Vide order dated 29.3.2013, Annexure P. 3, the assessing authority recorded that refund order be issued after approval from the competent authority. The petitioner was aggrieved against the grant of less refund and, accordingly, filed appeal on 17.7.2013, Annexure P. 4. In the meantime, the case was sent for approval and in the approval proceedings, the DETC vide memo dated 21.6.2013, Annexure P. 5 raised certain issues with regard to allowance of some deductions and rate of tax applied in one of the contracts. According to the petitioner, in approval proceedings, the authority cannot exercise the power of review, appeal or revision. In pursuance to the objections of the DETC, the ETO issued notice dated 28.6.2013, Annexure P. 6 for rectification of the assessment order. Reply dated nil Annexure P. 7 was filed to the notice by the petitioner stating that rectification u/s 19 of the Haryana VAT Act could only be of clerical and arithmetic mistakes. In the meantime, the ETO wrote another letter dated 30.8.2013, Annexure P. 8 for verification of TDS deposited by DSC. The Gurgaon authority replied that the TDS had been adjusted towards voluntary payment of DSC. Thereafter, revised notice of rectification dated 17.9.2013, Annexure P. 10 was issued by the ETO in which objection was raised that since the TDS deducted and deposited had been taken towards the voluntary payment of DSC, the benefit of TDS could not be granted to the petitioner. Reply to the revised notice was filed on 21.10.2013, Annexure P. 11 stating that the TDS deducted by the contractor could not be treated and adjusted on demand. It was further reiterated that the case in hand did not fall within the ambit of rectification. Inspite of the replies filed, the assessing authority vide order dated 6.11.2013, Annexure P. 12 rectified the assessment order. All the issues raised by the DETC in the memo dated 21.6.2013 Annexure P. 5 were decided against the petitioner and even credit of TDS deducted and deposited by the DSC was denied by stating that the credit of the same had been given to the deductors. The order created a demand of Rs. 31,50,428/- including interest of Rs. 14,52,204/-. Hence the instant petition by the petitioner.

3. We have heard learned counsel for the parties and perused the record.

4. In pursuance to the order dated May 12, 2014 passed by this Court, Dr. Laxmi Narayan Kharian, DETC and Ms. Santosh Chaudhary, ETO Hissar, have come present. Learned counsel for the State submitted that in so far as Annexure P. 12 is concerned, whereby rectification order dated 6.11.2013 has been passed creating liability against the petitioner, has been withdrawn. She further stated that the amount shall be refunded to the petitioner within 15 days from the date of receipt of a certified copy of this order. She, however, prayed that the State be allowed to take proceedings u/s 17 for reassessment or u/s 34 of the Haryana VAT Act for revision of the assessment order.

5. In view of the above, the writ petition is disposed of with a direction to the respondents to refund the amount due to the petitioner within 15 days from the

date of receipt of a certified copy of this order in accordance with law. It shall also be open to the respondents to take proceedings u/s 17 for reassessment or u/s 34 of the Haryana VAT Act for revision of the assessment order in accordance with law.