(2020) 11 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. No. 12917 Of 2020 (O&M)

M/S Larsen & Toubro Ltd. APPELLANT

Vs

U.T. Chandigarh And Others RESPONDENT

Date of Decision : 09-11-2020

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 29(2), 62(5)

Citation : (2020) 11 P&H CK 0028

Hon'ble Judges : S. Muralidhar, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Amrinder Singh, Ajay Jagga

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

CRM-11897-2020

1. This is an application seeking leave to place on record the rejoinder on behalf of the Applicant/Petitioner.

2. For the reasons stated therein the application is allowed. The rejoinder is taken on record.

CRM-11896-2020

3. This is an application seeking stay of the recovery notices dated 28th and 31st October, 2020 issued by Excise and Taxation Officer, Ward 3, U.T. Chandigarh (annexed as Annexures P-10 and P-12 with the Applicant/Petitioner's rejoinder) and in the alternate to advance the hearing of the main petition.

4. With the consent of the learned counsel for the parties, the main writ petition, which has been fixed for 12th November, 2020, is taken up for hearing today itself. The application is disposed of.

CWP-12917-2020

5. The challenge in the present petition is to an order dated 26th May, 2020 passed by the Deputy Excise and Taxation Commissioner (Appeals), U.T. Chandigarh ('Appellate Authority'), dismissing the Petitioner's Appeal No. 4 of 2013 against an order dated 1st March, 2013 passed by the Excise and Taxation Officer-cum-Designated Officer, U.T. Chandigarh, creating an additional demand of Rs. 7,15,42,823/- for the assessment year 2010-2011 under Section 29 (2) of the Punjab Value Added Tax Act, 2005 ('Act'), as applicable to the Union Territory of Chandigarh.

6. It appears that the Petitioner filed the aforesaid appeal on 29th April, 2013, on which date the relevant provision of the Act, concerning the making of pre-deposit i.e. Section 62 (5) of the Act, mandated that such appeal shall not be entertained unless it was accompanied by a minimum payment of 25% of "total amount of tax, penalty and interest, if any".

7. For some reason, the appeal was not immediately taken up for hearing. The contention of the Petitioner is that even at the stage of filing of the appeal, the Petitioner had already deposited sufficient amount with the Department and was therefore not required to make any further pre-deposit.

8. An amendment was made to Section 62 (5) of the Act, extended to U.T. Chandigarh, with effect from 28th July, 2015, whereby it was mandated that the appeal under Section 62 (5) of the Act would not be entertained unless there was a minimum payment of 25% of "the total amount of additional demand, penalty and interest, if any". Further, an Explanation was added below Section 62 (5) of the Act, which defined the expression "additional demand" to mean "any tax imposed as a result of any order passed under any of the provisions of this Act..."

9. It appears that as a result of above amendment, a communication was sent by the Excise and Taxation Officer (Ward-III), which reads as under:-

"As per verbal order dated 04.09.2015 by Deputy Excise & Taxation Commissioner (Appeal)-cum-Additional Excise & Taxation Commissioner, U.T. Chandigarh, you are hereby directed to deposit the amount 25% of the total additional demand created to hear the appeal by 18.09.2015 in respect of the case for Assessment Year 2010-2011 decided by the then E.T.O. Sh. Sanjeev Madaan."

10. It is required to be noted here that the Petitioner/Appellant received the aforesaid written communication from the Excise and Taxation Officer (Ward-III), but not from the Appellate Authority itself. Thus there was only a "verbal order" of the Appellate Authority, which was sought to be communicated to the Petitioner through the Excise and Taxation Officer (Ward-III), requiring it to deposit 25% of the "total additional demand created", in respect of the Assessment Year 2010-11.

11. A perusal of the impugned order dated 26th May, 2020 of the Appellate Authority reveals that it was on account of non-compliance with the above

"verbal order" viz., the failure to make the pre-deposit of 25% of 'additional demand', that the Petitioner's appeal has been dismissed.

12. Having heard learned Counsel for the parties, the Court is of the view that the order requiring the Petitioner/Appellant to make the pre-deposit within the specified time had to be a written order of the Appellate Authority. It could not have been a mere "verbal order". That order, if it had been in writing, would have had to consider the Petitioner's submissions as to why it was not required to make a further pre-deposit of the 'additional demand'. Further such written order, if it was adverse to the Petitioner/Assessee, would itself have been amenable to challenge before the Value Added Tax Tribunal, Chandigarh ('Tribunal'). In the absence of any such written order being passed, the Petitioner has been deprived of an opportunity of challenging such order before the Tribunal.

13. It is not in dispute that the impugned order of the Appellate Authority, dismissing the appeal was only on averment of non-compliance with the above "verbal order". In the considered view of the Court, for the reasons explained hereinabove, such ground for dismissal of the Petitioner/Appellant's is unsustainable in law.

14. Accordingly, the Court sets aside the "verbal order dated 4th September, 2015", purportedly made by the Appellate Authority, which was communicated to the Petitioner by the Excise and Taxation Officer (Ward-III) by the letter of the even date i.e. 4th September, 2015 and correspondingly, the impugned order dated 26th May, 2020 passed by the Appellate Authority dismissing the Petitioner's appeal.

15. The Petitioner's appeal will now be revived before the Appellate Authority for passing in the first place, an order on the Petitioner's submissions as regards the requirement of making the pre-deposit in terms of the amended Section 62 (5) of the Act. The Court directs the Appellate Authority to pass such order not later than 1st December, 2020. If the Petitioner is aggrieved by such order, it will be open to the Petitioner to seek further statutory remedies as are available to it in accordance with law.

16. It is made clear that this Court has not expressed any view on the submissions of either party as regards the prospective nature of the above amended provision and whether the Petitioner is required to make such pre-deposit of 25% of the "total amount by way of additional demand" in terms thereof. It will be for the Appellate Authority to pass an appropriate order as regards the making of pre-deposit in terms of the amended Section 62 (5), keeping in view the decisions relied upon by the parties before it.

17. The petition is disposed of in the above terms. The next date of hearing of 12th November, 2020 stands cancelled.