(2017) 01 AHC CK 0305

In the Allahabad High Court

Case No : Writ Tax No. 5 of 2017

M/S Shriram Pistons and Rings Ltd. APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 136

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Nishant Mishra, Sri. M. P. Devnath and Abhishek Anand, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—This petition challenges an order passed by the Commercial Tax Tribunal, Ghaziabad, dated 26.12.2016, disposing of the interim application filed in Second Appeal No. 596 of 2016, pertaining to the year 2013-2014 in respect of Central Sales Tax.

2. Petitioner contends that it is a company which has a manufacturing unit at Ghaziabad and has various other units in different States of the country. It is stated that the petitioner is manufacturing Piston Ring at Ghaziabad, which is then transported to different States and after addition to its value, the end product is subjected to payment of local tax in other States. According to the petitioner, the stock transfer which takes place from Ghaziabad to other places, does not constitute inter State sale so as to attract liability of tax. It is also stated that in respect of assessment proceedings for the previous year, the authorities themselves have not treated similar stock transfer to be inter State sale. It is contended that for the first time such stock transfer is treated as inter State Sale and the assessment order is challenged by filing an appeal, which is pending before the appellate authority. An application for grant of interim protection has been field in which the order impugned has been passed. The order under challenge notices the contention raised on behalf of the petitioner

and the petitioner has been directed to deposit 20% of the disputed tax amount within 10 days and the demand of the balance amount has been stayed, provided the petitioner deposits security to the satisfaction of the assessing authority for the balance amount. It is this order, which is under challenge, in the present writ petition.

3. Learned counsel for the petitioner states that the order is cryptic and non reasoned, and is not liable to be sustained inasmuch as the appellate authority has merely noticed the contention of the parties and no reasons or finding, even prima facie, in respect thereof have been given.

4. Learned counsel has further invited attention of the Court to Section 18-A(5) of the Central Sales Tax Act (hereinafter referred to as the ''Act'') which reads as Under :-

18-A. Appeals to be highest Appellate Authority of State :- (1) ....

(5) Notwithstanding anything contained in a State Act, the highest appellate authority of a State may, on the application of the appellant and after considering relevant facts, including the deposit of any amount towards local or central sales tax in other States on the same goods,pass an order of stay subject to such terms and conditions as it thinks fit, and such order may, inter alia, indicate the portion of tax as assessed to be deposited prior to admission of the appeal".

5. It is stated that before the Tribunal material had been brought on record to substantiate that nearly half of the disputed tax amount has been paid in other States, as local tax, on the same goods, which has not been taken note of. It is stated that such amount ought to have been taken note of and appropriate adjustment ought to have been allowed before requiring the petitioner to deposit the disputed tax amount.

6. Learned standing counsel has opposed the writ petition by stating that the petitioner is a major manufacturer and in the absence of any adverse financial condition, the deposit of amount ought not to be interfered with by this Court. It is also stated that various factual issues are required to be adjudicated in appeal and, therefore, the direction issued by the appellate authority to deposit 20% of the disputed tax amount could not be said to be unreasonable.

7. I have heard Sri M.P. Devnath, Sri Nishant Mishra and Sri Abhishek Anand for the petitioner and learned Standing Counsel for the respondent. With the consent of the learned counsel for the parties, the writ petition is disposed of at this stage itself, particularly as the dispute with regard to liability of the petitioner to pay tax is yet to be determined in appeal.

8. From the materials brought on record, it transpires that the petitioner has set up a claim before the appellate forum for grant of appropriate adjustment, on account of payment of local tax in other States, upon the same goods, by virtue of Section 18-A(5) of the Act. Attention of the Court has been invited to the specific plea taken in that regard before the appellate forum. It is contended on

behalf of the petitioner that nearly half of the amount of tax is liable to be adjusted, if due credit was accorded by the appellate authority to the payment of local tax in other States,in terms of Section 18-A(5).

9. From the order under challenge, it is apparent that issue of adjustment of such claim has neither been gone into by the appellate authority nor any reasons are disclosed in the order in that regard. Even a prima-facie finding is not returned.

10. Considering the facts and circumstances as have been brought on record, it would be appropriate to modify the order dated 26.12.2016 by providing that in case the petitioner deposits 20% of the disputed tax amount, after adjusting the amount allegedly paid by it towards local tax in other States in respect of the same goods, which is to the extent of nearly 50% of disputed tax amount, within 2 weeks from today, the appellate authority shall entertain and decide the appeal on merits,in accordance with law, without insisting upon deposit of any further amount. The appeal itself shall be disposed off, at the earliest possible, without granting any unnecessary adjournment to the parties.

11. With the aforesaid modification/ direction, writ petition stands disposed of.