(2010) 06 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 2474 of 2010

Nav Durga Marketing Co. APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Himachal Pradesh General Sales Tax Act, 1968 — Section 30

Citation : (2010) 35 VST 426

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Petitioner filed three appeals against the composite order passed by Respondent No. 4, for three years, i.e., 1999-2000, 2000-01 and 2001-02 before the second Respondent, first appellate authority. Those appeals were dismissed on the ground that the Petitioner did not make the required pre-deposit of 50 per cent of the amount, assessed by the fourth Respondent.

2. According to the Petitioner, since he had closed down the business in the year 2002, he was not in a financial position to deposit the pre-deposit and, therefore, he had filed an interlocutory application in terms of proviso to Sub-section (5) of Section 30 of the Himachal Pradesh General Sales Tax Act, which reads as follows:

(5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax including interest payable or of the penalty, if any, imposed or both, as the case may be:

Provided that if such authority is satisfied that the dealer is unable to pay the tax (including interest payable), assessed or the penalty, if any, imposed or both, he may, for reason to be recorded in writing, entertain an appeal without the tax (including interest payable) or, penalty or both having been paid in full or after part payment of such tax (including interest payable) or penalty or both.

3. However, it is seen that the first appellate authority, without passing separate orders as to whether the Petitioner is entitled for such exemption, dismissed the appeal on the ground that there was no pre-deposit. The Petitioner pursued the matter before the Tribunal. It appears, before the Tribunal, the Petitioner took up a contention that deposit u/s 30, Sub-section (5) will not apply to him since the first appellate authority has not considered his request for exemption. Finding that the argument is baseless, the Tribunal dismissed the appeal and thus the Petitioner is before us in this petition.

4. We have heard learned Counsel for the Petitioner and the learned Advocate-General, appearing for the State.

5. We find that the first appellate authority should have passed a separate order on the interlocutory application, filed by the Appellant for exemption from pre-deposit, in terms of proviso to Sub-section (5) of Section 30 of the Act. Having not done that, we set aside the appellate orders, passed by the first appellate authority and the Tribunal and remit the matters to the first appellate authority, namely, the second Respondent with a direction to pass orders on the applications, filed by the Petitioner, in terms of proviso to Sub-section (5) of Section 30 of the Act for exemption from pre-deposit. Orders, as above, shall be passed within a month from today. The Petitioner will appear before the first appellate authority on July 19, 2010, on which date the first appellate authority shall hear the Appellant on the applications, referred to above, and thereafter speaking order shall be passed within another one week and communicate the same to the Petitioner within another one week. In case the required steps are not initiated so far, the recovery shall be deferred till orders, as above, are passed by the appellate authority.

6. The writ petition is disposed of, so also the pending application(s), if any. Copy dasti.