(2007) 02 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Ratti Woollen Mills APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 12

Citation : (2007) 9 VST 105

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The prayer made in this petition filed under Article 226 of the Constitution is for issuance of direction to the respondents to release the payment of Rs. 5,50,000 deposited by the petitioner at the time of filing appeal as a condition precedent before the Deputy Excise and Taxation Commissioner (Appeals), Punjab.

2. Brief facts of the case are that the petitioner-firm is engaged in the manufacture of yam. While framing assessment for the year 1992-93, the Assessing Authority created additional demand of Rs. 33,52,234 while rejecting R.D. sales made to two firms, namely, Shiv Shakti Yarn and Indian Woll Agency, vide order dated March 31, 2000.

3. As a pre-condition for entertainment of appeal against the order creating additional demand, the petitioner deposited a sum of Rs. 5,50,000 on September 6, 2005. Ultimately, the order of assessment was set aside by the VAT Tribunal and the matter was remitted back to the Assessing Authority to pass fresh order in accordance with law, vide order dated July 11, 2006. After the remand by the VAT Tribunal, the matter has not been decided by the Assessing Authority in spite of requests made by the petitioner. Thereafter the petitioner filed application dated July 26, 2005, for refund of the amount deposited on September 6, 2005. When no action was taken on the application of the petitioner either for decision of the remand case or for refund of the amount deposited, the petitioner

approached this court by filing the present petition on November 29, 2006. After notice of the petition was served respondent No. 1 passed an order on December 6, 2006 (R1) and rejected the claim of the petitioner by observing as under:

This order shall withhold a refund of Rs. 5,50,000 u/s 12(6) of the Punjab General Sales Tax Act, 1948 (hereinafter called, ''the Act'') in the case of M/s. Ratti Woollen Mills, Textile Colony, Indst. Area-A, Ludhiana, for the year 1992-93.

The assessment of M/s. Ratti Woollen Mills, Ludhiana, for the year 1992-93 was made by the Assessing Authority vide order dated March 31, 2000 creating an additional demand of Rs. 33,52,234. The dealer went in appeal against the order of the Assessing Authority and after prolonged litigation, deposited Rs. 5,50,000 under the order of the honourable Punjab and Haryana High Court as prior payment for entertainment of appeal by the Deputy Excise and Taxation Commissioner (Appeals). On further appeal, the case was remanded by VAT Tribunal, Punjab, vide order dated July 11, 2006. Filing of rectification application is already under process in this case. The dealer has made application seeking refund of Rs. 5,50,000 and Assistant Excise and Taxation Commissioner, Ludhiana-III, has sought withholding of refund. The matter has been considered in the light of the provisions u/s 12(6) of the Act ibid which read as under:

Where an order allowing refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

I am of the view that the case is covered u/s 12(6) of the Act, and allowing of refund will adversely affect the chances of recovery of the amount. Accordingly, I hereby withhold refund of Rs. 5,50,000 for the year 1992-93 of the abovesaid dealer u/s 12(6) of the Act.

4. Mr. Y.P. Singla, learned Counsel for the petitioner, has argued that once the appeal filed by the petitioner against the order of assessment has been accepted by quashing that order then even if the case has been remanded back, the petitioner becomes entitled to refund of the amount which was deposited as a pre-condition for entertainment of appeal. The argument is that in the eyes of law no demand of Revenue would be considered pending on that date.

5. The learned State counsel has, however, submitted that the matter has merely been remanded back to the Assessing Authority and the order has not been accepted by the department. He has argued that rectification application has now been filed by the Revenue which is likely to be accepted and in that event it may be difficult for the State to recover the amount from the petitioner. Keeping that in view, order u/s 12(6) of the Punjab General Sales Tax Act, 1948 (for short, "the 1948 Act") has been passed to withhold refund to safeguard the revenue. However, he could not deny that on the date of passing of order on December 6, 2006 for withholding refund rectification application had not been filed.

6. After hearing learned Counsel for the parties, we find that the respondents have no right to retain the aforementioned amount in the absence of any finding that the refund would adversely affect the recovery as per the provisions of Section 12(6) of the 1948 Act. The reliance of the respondents on the order dated December 6, 2006 (R1), passed u/s 12(6) of the 1948 Act is wholly misplaced because the aforementioned order lacks complete application of mind and the primary requirements of Section 12(6) of the 1948 Act remains unsatisfied. The aforementioned provision is reproduced hereunder for ready reference:

Where an order allowing refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

7. A perusal of the aforementioned provisions shows that power to withhold refund could be exercised in cases where appeal or further proceedings under the 1948 Act are pending and the Assessing Authority is of the opinion that the refund is likely to adversely affect the recovery then refund may be withheld and the case be referred to the Commissioner whose order is to be considered final. The order withholding refund is blissfully silent as to how the refund would adversely affect the recovery. The order is absolutely laconic. There is not even a whisper of the material on the basis of which satisfaction has been recorded by the Commissioner. Accordingly the same cannot be sustained in the eyes of law nor can the same be relied upon for the purpose of defeating the claim of the petitioner.

8. In view of the above, the writ petition is allowed. The order dated December 6, 2006 (R1) is set aside and a direction is issued to the respondents to refund the amount of Rs. 5,50,000 along with statutory interest expeditiously but not later than two weeks from the date a certified copy of this order is supplied to them.

9. At this stage learned State counsel has prayed for grant of liberty to pass a fresh order. However, he has not been able to show any material to support his request. Moreover, in the facts and circumstances of the case, the prayer made by him cannot be accepted because firstly the assessee has requested for decision of the case after remand and when that prayer was not acceded to, only then he prayed for refund.

10. The writ petition is disposed of in above terms.

