(2016) 02 P&H CK 0251

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 11 of 2016 (O&M)

Sabharwal Enterprises APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab Value Added Tax Act, 2005 — Section 62(5), Section 68

Citation : (2016) 02 P&H CK 0251

Hon'ble Judges : Ajay Kumar Mittal and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Sandeep Goyal, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J.—1. This appeal has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 1.10.2015 (Annexure A-3) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in Appeal No. 209 of 2015, claiming the following substantial question of law:--

"Whether on the facts and circumstances of the case, both the authorities below were justified in dismissing the appeals of the appellant by holding the condition of pre deposit of 25% as mandatory for the entertainment of appeal?"

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The appellant is a dealer having TIN No. 03171154793 and is engaged in the trading of non-ferrous metal at Ludhiana. It had filed its quarterly and annual returns for the assessment year 2011-12 after claiming the ITC. A notice was issued to the appellant by the Excise and Taxation Officer. The assessment was framed for the assessment year 2011-12 vide order dated 16.9.2014 (Annexure A-1) by creating an additional demand of Rs. 1,14,47,560/-. Feeling aggrieved by the assessment order, Annexure A-1, the

appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), who vide order dated 2.2.2015 (Annexure A-2) dismissed the appeal for non-deposit of 25% of the additional demand under Section 62(5) of the Act. Still dissatisfied, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 1.10.2015 (Annexure A-3) upheld the order of the Deputy Excise and Taxation Commissioner (Appeals) and dismissed the appeal. Thereafter, the appellant filed CWP No. 330 of 2016 which was dismissed as withdrawn by this Court vide order dated 8.1.2016 (Annexure A-4). Hence, the present appeal.

3. Notice of motion.

4. Ms. Sudeepti Sharma, Deputy Advocate General, Punjab, accepts notice.

5. We have heard learned counsel for the parties.

6. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands concluded by the decision of this Court in CWP No. 26920 of 2013 (Punjab State Power Corporation Limited v. The State of Punjab and others) decided on 23.12.2015 wherein after considering the relevant statutory provisions and the case law on the point, it was held as under:--

"33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/ protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.

34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of

pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms."

7. In view of the above, the orders dated 2.2.2015 (Annexure A-2) passed by the Deputy Excise and Taxation Commissioner (Appeals) and dated 1.10.2015 (Annexure A-3) passed by the Tribunal are set aside. The matter is remanded to the Deputy Excise and Taxation Commissioner (Appeals) and the present appeal is disposed of in terms of the judgment in Punjab State Power Corporation Limited''s case (supra).