(1997) 12 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 18520 of 1997

Shankar Rice Mills APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Citation : (1998) 119 PLR 440 : (2000) 118 STC 368

Hon'ble Judges : N.K. Agrawal, J;G.C. Garg, J

Bench : Division Bench

Advocate : D.D. Verma, for the Appellant;

Judgement

1. Petitioner is a registered dealer under the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956. Petitioner was granted registration certificate under the abovesaid two Acts by virtue of which it was liable to pay tax with effect from May 18, 1995. The Assessing Authority-cum-Excise and Taxation Officer, Karnal created a demand of tax in the sum of Rs. 2,76,034 against the petitioner. Aggrieved by the said order, the petitioner filed appeal before the Joint Excise and Taxation Commissioner (Appeals), Ambala. Along with the appeal, an application was also moved for entertaining the appeal without prior payment of the tax demanded. Respondent No. 3 entertained the appeal subject to the condition that the petitioner would make the payment of tax in monthly instalments of Rs. 50,000 by the 25th of each month. Aggrieved by the order of respondent No. 3, the petitioner filed appeal before the Sales Tax Tribunal, Haryana, Chandigarh.

2. Grievance of the petitioner in this writ petition under Articles 226/227 of the Constitution of India is that the appeal filed by it before the learned Tribunal is not being taken up for adjudication and the Assessing Authority has started taking coercive methods to recover the amount under the Land Revenue Act. Prayer of the petitioner in this petition therefore is that respondent-authorities may be directed not to insist for payment of the tax demanded, during the pendency of the appeal before respondent No. 3.

3. The appeal of the petitioner challenging the order of the Joint Excise and Taxation Commissioner refusing to entertain the appeal in the absence of prior payment of tax is pending adjudication before the Sales Tax Tribunal. This appeal has not been disposed of as yet and the authorities in the absence of decision of that appeal have started coercive measures to recover the tax imposed by the Assessing Authority. It is not just and fair to keep the appeal pending and during the pendency thereof, to take steps to recover the demand created by the orders under challenge. In the normal course we would have remitted the matter to the learned Tribunal to dispose of the pending appeal and stayed recovery till the disposal of that appeal but in the facts and circumstances of this case, we find that no useful purpose would be served to remit the matter to the learned Sales Tax Tribunal as the only matter pending before the Tribunal is whether the appeal preferred by the petitioner and pending before the Joint Excise and Taxation Commissioner be ordered to be heard on its own merits in the absence of prior payment of tax.

4. After hearing learned counsel for the petitioner and having regard to the facts and circumstances of this case especially the question of liability of the petitioner to pay tax being under consideration in the pending appeal, we direct the Joint Excise and Taxation Commissioner that appeal of the petitioner shall be heard on its own merits provided it deposits a sum of rupees one lakh within one month from today and furnishes a proof to the Appellate Authority in that behalf, i.e., to the Joint Excise and Taxation Commissioner. In the event of the amount being deposited, the appeal pending before the Joint Excise and Taxation Commissioner shall be entertained and disposed of on its own merits in accordance with law. Since we have directed the assessee to deposit a sum of rupees one lakh as a condition precedent for hearing the appeal on merits by the Joint Excise and Taxation Commissioner, the appeal of the petitioner pending before the Sales Tax Tribunal has been rendered infructuous.

5. Writ petition is accordingly disposed of in the above terms.

