(2014) 01 AHC CK 0273

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Nos. 108 and 109 of 2014

Sintech Precision Products Ltd. APPELLANT

Vs

Commissioner of Commercial Tax RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 74 VST 493

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ashok Kumar and Praveen Kumar, Advocate for the Appellant

Judgement

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Sudhir Agarwal, J.—Considering a pure legal submission advanced by learned counsel for the revisionist, learned standing counsel stated that he does not propose to file any counter-affidavit but would make oral submissions and the revision may be disposed of finally at this stage under the Rules of this court, hence I proceed accordingly. This revision has arisen from the assessment order dated May 15, 2013, whereagainst revisionist preferred first appeal and also filed an application seeking stay of payment of disputed tax in its entirety. The first appellate authority disposed of stay application by permitting the assessee to deposit only 50 per cent of disputed tax and rest 50 per cent has been stayed. There against the assessee preferred second appeal wherein the Tribunal has modified the first appellate authority''s order and stayed 75 per cent of disputed tax, meaning thereby the assessee has now to deposit 25 per cent of disputed tax. With respect to 75 per cent tax the assessee has to furnish security within 30 days.

2. The learned counsel for the assessee contended that in view of the apex court''s decision in Pennar Industries Ltd. Vs. State of A.P. and Others, , the appellate authority while passing order on stay application has to give reasons if application of assessee is not allowed in its entirety, as to why he is not inclined

to grant complete stay to assessee and it should not be disposed of in routine manner unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of amount. Reliance is also placed upon a decision of this court in Kribhco Shyam Fertilizers Ltd. Vs. Commissioner of Commercial Taxes, ; [2009] 40 NTN 67 and Sales/Trade Tax Revision No. 615 of 2010 (Ganesh Namkeen and Sweet House v. Commissioner, Commercial Tax, U.P., Lucknow), decided on August 5, 2010.

3. The learned standing counsel having gone through the impugned orders passed by the first appellate authority as well as the Tribunal could not dispute that no reasons have been given by them in passing the aforesaid orders, as to why the assessee is not entitled for complete stay and should pay part of disputed amount.

4. I have also gone through the order of the first appellate authority as well as that of the Tribunal. The Tribunal has neither considered prima facie merits of the revisionist case nor has taken into account financial distress of revisionist in the payment of disputed tax amount and other relevant factors. In this way the order of the Tribunal is unreasoned and appears to have been passed in a routine and a casual manner.

5. In view of the above, the impugned order of the Tribunal cannot be sustained specially in view of the authorities referred to above. The order of the Tribunal dated December 27, 2013 is set aside and matter is remanded to for deciding appeal of the revisionist afresh, again, on merits in accordance with law. Revision is allowed accordingly.