(2003) 11 P&H CK 0096

In the Punjab And Haryana At Chandigarh

S.S. Enterprises APPELLANT

Vs

Sales Tax Tribunal and Others RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Citation : (2008) 11 VST 578

Hon'ble Judges : J.S. Khehar, J;Hemant Gupta, J

Bench : Division Bench

Judgement

J.S. Khehar, J.—The petitioner was allegedly carrying on the business of manufacturing plywood board at Gurgaon. It was registered as a dealer under the provisions of the Haryana General Sales Tax Act, 1973 as well as the Central Sales Tax Act, 1956.

According to the averments made in the writ petition, the petitioner had been filing sales tax returns regularly till the closure of its business in 1994 on account of heavy losses suffered by it. The registration certificate of the petitioner, therefore, came to be cancelled on January 14, 1998 with effect from January 31, 1997.

2. The assessing authority framed an assessment order against the petitioner-firm for the year 1996-97 wherein the petitioner was found liable for payment of Rs. 1,21,000 towards tax. The petitioner impugned the order passed by the assessing authority by filing an appeal before the Joint Excise and Taxation Commissioner (Appeals). Along with the aforesaid appeal, the petitioner preferred an application for stay. The appellate authority by an order dated January 13, 1999 directed the payment of the tax assessed by the assessing authority in six monthly instalments commencing from February, 1999. Dissatisfied with the order passed by the Joint Excise and Taxation Commissioner (Appeals), the petitioner preferred an appeal before the Sales Tax Tribunal, Haryana. The Sales Tax Tribunal, Haryana, remanded the case back to the Joint Excise and Taxation Commissioner (Appeals) on October 15,1999 with a direction to consider the claim of the petitioner on the application of stay filed by it.

3. After remand, the Joint Excise and Taxation Commissioner (Appeals) by an order dated January 12, 2000 directed the petitioner to pay the entire amount on or before March 8, 2000. Aggrieved by the order dated January 12, 2000 the petitioner again approached the Sales Tax Tribunal, Haryana, challenging the order dated January 12, 2000. The Sales Tax Tribunal, Haryana, dismissed the instant appeal preferred by the petitioner on June 21, 2000 with liberty to the petitioner to deposit the amount in terms of the order passed by the Joint Excise and Taxation Commissioner (Appeals) within 60 days (from June 21, 2000). The petitioner again approached the Sales Tax Tribunal, Haryana, by filing review petition against the order dated June 21, 2000. During the pendency of the review petition, the appeal preferred by the petitioner before the Joint Excise and Taxation Commissioner (Appeals) was dismissed on account of non-payment of pre-deposit in terms of the order passed by the Sales Tax Tribunal, Haryana. Be that as it may, by an order dated September 10, 2001 the Sales Tax Tribunal, Haryana dismissed the review petition filed by the petitioner. It is in the aforesaid peculiar circumstances that the petitioner has approached this court.

4. On the issuance of notice of motion, a detailed written statement has been filed on behalf of respondents Nos. 1 to 3. The factual position noticed above has been affirmed. It is apparent from the pleadings that the appeal preferred by the petitioner against the assessment of tax has been declined by the Joint Excise and Taxation Commissioner (Appeals) merely on account of the fact that the petitioner has not been able to deposit the tax in terms of the directions of the Sales Tax Tribunal, Haryana. In other words, the appeal preferred by the petitioner has not been adjudicated upon and disposed of on merits.

5. We are satisfied that the claim of the petitioner cannot be adjudicated upon in appeal unless pre-deposit is made in terms of the statutory provisions. It was, therefore, justified for the various authorities to require the petitioner to make a deposit of the assessed tax/penalty before his appeal could be adjudicated upon. On his failing to do so, the appeal preferred by the petitioner came to be dismissed summarily. Be that as it may, in the peculiar facts and circumstances of this case, we are satisfied that the petitioner deserves an opportunity of hearing as well as adjudication of his claim on merits. These claims, however, cannot override the statutory obligations to make a pre-deposit. Having examined the matter in its totality specially the allegations made repeatedly in the writ petition that the business activities of the petitioner had ceased as far back as in 1994, we consider it just and appropriate to afford one opportunity to the petitioner to make pre-deposit in terms of the order passed by the Sales Tax Tribunal, Haryana, by extending the time-limit to a further period of three months from today. In case, the petitioner deposits the amount within the time afforded to it hereinabove, the order passed by the Joint Excise and Taxation Commissioner (Appeals) March 28, 2001 will be deemed to have been set aside, whereafter, the appellate authority shall afford an opportunity of hearing to the petitioner and thereupon dispose of the appeal on merits, in accordance with law. If, however, the petitioner fails to make the deposit, as noticed above, the

appellate order dated March 28, 2001 shall stand affirmed.

6. Disposed of in the aforesaid terms.