(2013) 10 P&H CK 0417

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23146 of 2013

Surya Synthetics — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 71 VST 335

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—Prayer in this petition filed under article 226 of the Constitution of India, is for issuance of a writ in the nature of mandamus directing the respondents to refund Rs. 88,000 deposited by the petitioner as part deposit of penalty in compliance with section 14B(7) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act"). Counsel for the petitioner submits that the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar, imposed a penalty of Rs. 3,52,000 upon the petitioner. The petitioner filed an appeal and while filing the appeal, deposited Rs. 88,000 towards penalty. The appeal came up for consideration before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Jalandhar Division, Jalandhar, who, vide order dated November 2, 2006, allowed the appeal and remanded the matter to the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar, for examination, afresh. Despite expiry of seven years, no proceedings have been initiated, much less, has any notice served or order passed. The respondents may, therefore, be directed to refund the amount deposited by the petitioner.

2. Reply filed on behalf of respondent No. 2, in court today, is taken on record.

3. The counsel for the respondents submits that the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Jalandhar Division, Jalandhar, has not set aside the order imposing penalty, but has merely directed the petitioner to produce relevant material before the Assistant Excise and Taxation

Commissioner, Mobile Wing, Jalandhar. The petitioner has never appeared before the officer or produced any material in compliance with the order of remand. It is, however, fairly conceded that the Department has also not issued any notice to the petitioner, in accordance with the order passed in appeal.

4. We have heard counsel for the parties and perused order dated November 2, 2006 passed in appeal which reads as follows:

The grounds of appeal and the contents of the penalty order have been considered. The appellant has disputed the levy of penalty ex parte and without appreciation of the factual position and examination of his books of accounts. The enquiry officer has passed ex parte order concluding that ''in view of the contravention of section 14B(2) of the Act and value of the goods involved, I impose a penalty of Rs. 3,52,000 u/s 14B(7)(ii) of the Act''. The order is ex parte and non-speaking. The appellant has also not produced his books of accounts before the enquiry officer to arrive at a correct conclusion. In view of the totality of the circumstances the case is remanded back to the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar, with the directions to examine the case afresh after giving opportunity to the appellant and to pass a speaking and a reasoned order. The appellant is directed to place any material evidence he wishes to produce before the enquiry officer. The case should be decided within two months from the receipt of this order.

5. A perusal of the order reveals that order imposing penalty was held to be non-speaking and ex parte and was therefore, remanded to the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar, to pass a fresh order after granting an opportunity to the petitioner to adduce material evidence in support of his plea that he is not liable for any penalty. The absence of words, that the impugned order has been set aside or that the appeal is allowed, would not raise an inference that the original order subsists. A perusal of the aforesaid extract leaves no ambiguity that order levying penalty was set aside and the matter remanded to the Assistant Excise & Taxation Commissioner, Mobile Wing, Jalandhar, to pass a fresh order. The petitioner, admittedly, deposited Rs. 88,000 at the time of filing appeal. The appeal having been allowed and order of penalty having been set aside, the petitioner is entitled to refund of Rs. 88,000. The mere pendency of the remand case, does not entitle the respondents to retain the amount deposited by the petitioner. As a consequence, the writ petition is allowed. The respondents are directed to refund Rs. 88,000 to the petitioner. The petitioner may, if so advised, raise a plea with respect to interest on delayed refund of Rs. 88,000 in the remand proceedings. The remand proceedings be decided within six months.

