IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16581 of 2015

Date of Decision: 19.10.2015

Pawan Kumar, Contractor

....Petitioner.

Versus

State of Punjab and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Tirbhawan Singla, Advocate for the petitioner.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the letter/order dated 30.7.2015 (Annexure P-8) rejecting his claim for grant of exemption from payment of advance tax. Further, a writ of mandamus has been sought directing the respondents not to enforce the recovery of any tax under the Punjab Value Added Tax Act, 2005 (in short "the Act") and to issue him the certificate of exemption/reduced payment of advance tax. Prayer has also been made directing the respondents to allow the petitioner to

import the goods without payment of any tax on the import of such goods in the State, during the pendency of the writ petition.

2. The petitioner is a contractor and is engaged in the business of various types of contracts in and outside the State of Punjab. He is duly registered with the department of Excise and Taxation having TIN No. 03292021034. As per provisions of Section 27 of the Act, for the payment made to the contractor by the contractee, a notified sum is required to be deducted at source and deposited in the treasury by the contractee who is entitled to take credit of the said amount. The rate of tax notified at present is 6% and the said amount is deducted on the total value of payments received/credited irrespective of the value of the goods involved thereunder. The petitioner is filing his returns periodically. He is not liable to pay any tax in the treasury as the tax which was deducted at source along with input tax credit is more than the total tax liability. The Government of Punjab vide notification dated 4.10.2013 (Annexure P-1) issued under proviso to Section 3A of the Punjab Tax on Entry of Goods into Local Area Act, 2000 granted exemption to all taxable persons registered under the Act from the payment of tax levied by the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.83/P.A.9/2000/S.3-A/2012 dated 18.9.2012. Simultaneously, the State Government had also issued a notification dated 4.10.2013 (Annexure P-2) under Section 6(7) of the Act for imposition of tax in advance on 30 items mentioned therein. A number of contractors who were working as contractors in the State of Punjab applied for exemption from payment of advance tax on the ground that the contractee is deducting TDS @ 6% as per Section 27 of the Act from the payment made in the works/contracts and the contractors are also

paying tax on local purchases resulting into input tax credit which was more than total tax liability which ultimately resulted in the refund at the end of the year. The Department granted exemption to various persons/ companies/firms vide exemption certificates (Annexure P-3 Colly). The petitioner also moved a representation dated 15.5.2015 (Annexure P-4) to respondent No.3 for exemption of advance tax, but no response had been received till date. CWP No. 19835 of 2014 was filed by Ayappa Infra Projects Pvt. Ltd. against the State of Punjab which was disposed of vide order dated 12.12.2014 (Annexure P-5) as having been rendered infructuous on the specific statement made by the State counsel that the Government is in the process of clarifying that a person whose TDS is being deducted, cannot be called upon to pay advance tax in lieu of the liability with respect to VAT. In pursuance thereto, respondent No.2 vide letter dated 31.12.2014 (Annexure P-6) issued the instructions regarding exemption from the payment of tax in advance as per provisions of Section 6(7) of the Act. Since, the petitioner was not granted exemption from the payment of the advance tax, he filed CWP No. 13537 of 2015 and this Court vide order dated 9.7.2015 (Annexure P-7) directed the respondents to decide the representation dated 15.5.2015 (Annexure P-4) moved by the petitioner. The respondents vide order dated 30.7.2015 (Annexure P-8) rejected the claim of the petitioner on the ground that he is not eligible for exemption from payment of advance tax in terms of notification dated 15.11.2013 (Annexure P-9). Hence, the present writ petition.

3. Upon notice of motion having been issued, the respondents controverted the averments made in the writ petition. It was pleaded therein that the returns filed by the petitioner for the period 2012-13 to

2014-15 were perused and were not found to be supported with any certificate in Form VAT-27 of the TDS deducted by the contractee. The petitioner has merely claimed the deduction of TDS in his VAT return and has not furnished any certificate of TDS deduction or receipts of such deposits of deducted TDS into Government treasury.

4. Learned counsel for the petitioner submitted that respondent No.4 vide order dated 30.7.2015 (Annexure P-8) had declined the claim of the petitioner without affording an opportunity of hearing to him. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed. It was further submitted that liberty be granted to the petitioner to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the present writ petition, however, direction be issued to the authority concerned to decide the representation expeditiously in a time bound manner in accordance with law.

5. On the other hand, learned State counsel supported the order passed by respondent No.4.

6. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioner.

7. The order impugned herein (Annexure P-8) reads thus:-

> "Your application dated 6.5.2015 for exemption from payment of advance tax has been filed after verifying all aspects of the case as you are not eligible for exemption from payment of advance tax as per notification dated 15.11.13."

8. A perusal of the above order shows that it is neither

speaking nor has been passed after affording an opportunity of hearing to the petitioner. Further, it was noticed that after verifying all aspects of the case, as per notification dated 15.11.2013, the petitioner was not eligible for exemption from payment of advance tax. Once respondent No.4 was holding that the petitioner was found not eligible for exemption from payment of advance tax, the same required to be specifically dealt with by respondent No.4 by passing a speaking order and after affording an opportunity of hearing to him.

9. In view of the above, the impugned order (Annexure P-8) passed by respondent No.4 which do not satisfy the requirements of being a reasoned and speaking order is quashed. However, without expressing any opinion on the merits of the case, we grant liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation being filed by the petitioner within a period of 15 days from the date of receipt of certified copy of this order, the same shall be decided by respondent No.4 in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days from the date of receipt of the representation. The petitioner shall be entitled to lead any evidence to substantiate his claim before the concerned authority.

10. Writ petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

October 19, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**