IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.23497 of 2014
Date of decision:09.03.2015

Haryana State Pollution Control Board, Panchkula
....Petitioner

Versus

The Commissioner of Income Tax, Panchkula & others
......Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.

Mr.T.K.Joshi, Advocate, for the respondents-Department.

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S.J.Vazifdar, Acting Chief Justice (Oral):

The petitioner has challenged the respondents' action, attaching six bank accounts, appropriating the amounts therefrom for its payments of the penalty levied, under the provisions of the Income Tax Act, 1961 (for short, the 'Act').

The petitioner is a Government of Haryana undertaking. It receives grants from the Central Government and from the State Government. The same are used for the purpose of discharging its statutory functions and duties.

The respondents contend that the petitioner had not obtained exemption under Section 10(23C)(iv) and registration under Section 12AA of the Act and as a result thereof, they are not entitled to the exemption that they are claiming. There are proceedings, therefore, pending in respect of the refusal of exemption under Section 10(23C)(iv) of the Act. In the event of the petitioner succeeding in those proceedings there is a possibility that the entire demand including for the principal amount will be set aside.

By an order dated 21.01.2015, a Division Bench of this Court expressed the hope that the petitioner's appeal before the CIT (Appeals) would be decided by the next date of hearing. The same is still pending.

The tax dues have already been paid. In addition thereto, pursuant to the attachment of the accounts, an amount of about ₹11.27 crores has already been appropriated by the respondents-Department against a demand of ₹51 crores towards interest. The petitioner had, thereafter, filed an application for stay on 10.11.2014 before the CIT (Appeals). The same was rejected on the very same date, without affording the petitioner a hearing. On the same day, the Banks were called upon to pay the amount lying to the credit of the petitioner with the respondents.

Thus, the petitioner's stay application has not been appropriately considered. The only ground on which it was rejected is that the pendency of the appeal is not a ground for granting the stay. The pendency of the appeal was, however, not the only ground on which the stay was sought. There are several other factors including the constitution of the petitioner and the nature of its functions it is carrying out under the statute.

Two drafts amounting to ₹4 crores and ₹18 crores, we have been informed, have been prepared by the Bank for payment to the Department but the respondents have been restrained from withdrawing the same, by the interim order passed by this Court on 17.11.2014. To allow the drafts to remain in operation would not enure to the benefit of either of the parties as the interest would stop running from the date on which they have been prepared. The Bank shall, therefore, cancel the drafts and credit the same to the account of the petitioner.

We are, however, not inclined to entertain the prayer for refund of the amount of about ₹11.27 crores, at this stage. The same must await the decision of the appeal before the CIT(Appeals).

In these circumstances and especially considering the fact that the petitioner is a statutory Corporation and receives grants also from the Central Government, it would be proper that no coercive action is taken against the demand of penalty till the decision of the appeal before the CIT (Appeals). The petitioner shall not seek any adjournment on any ground before the CIT (Appeals).

The writ petition is, accordingly, disposed of.

(S.J.Vazifdar)
Acting Chief Justice

09.03.2015 **(G.S.Sandhawalia)**
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