IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.24906 of 2014(O&M)
Date of decision:12.05.2015

M/s Perfect Mechanical Industries, Faridabad

....Petitioner

Versus

State of Haryana & 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.

Ms.Mamta Singla Talwar, AAG, Haryana, for the respondents.

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G.S.Sandhawalia J.

1. The petitioner, who is a proprietorship concern, has filed the present writ petition, for issuance of direction to the respondents not to enforce the recovery of penalty imposed under Section 9(2) of the Central Sales Tax Act, 1956 (for short, the 'CST Act') read with Section 38 of the Haryana Value Added Tax Act, 2003 (for short, the 'VAT Act'), during the pendency of the appeal before the Haryana Tax Tribunal, which is not functional at present. An additional prayer has also been made to refund the amount of tax and interest to the tune of ₹1,46,00,000/-, which has been recovered by encashing the bank guarantee in terms of Section 35(5) of the VAT Act, without any intimation to the petitioner.

2. Counsel for the petitioner has vehemently submitted that the first appeal of the petitioner was dismissed on 19.11.2014 (Annexure P3) by the First Appellate Authority, namely, the Joint Excise & Taxation Commissioner and the order was supplied on 24.11.2014. The bank guarantee which had been

submitted in pursuance of the liability created vide order dated 05.05.2014 (Annexure P2) was wrongfully sought to be encashed on 24.11.2014, without giving any prior intimation as per the requirement of Rule 70(3) of the Haryana VAT Rules, 2003 and therefore, it is submitted that the amount should be refunded during the pendency of the appeal which he has filed before the Tribunal on 02.12.2014, against the order of the First Appellate Authority.

3. Counsel for the State has seriously opposed the said request, in the present facts and circumstances, which, *prima facie,* we find very reasonable, keeping in view the conduct of the petitioner, as such.

4. The case of the petitioner, admittedly, is that an assessment order was passed by the assessing authority on 05.12.2013 and an additional demand of ₹72,84,261/- was created due to the non-production of the declaration forms, i.e., C-Forms, at the time of assessment. The said forms were, thereafter, produced to the tune of ₹68,076,501/- and the demand was, thus, reduced to ₹1,36,228/-, which was paid by the petitioner. The alleged C-Forms, supplied subsequently, were alleged to be in respect of the goods supplied to the vehicle factory, Jabalpur, a Government of India unit, manufacturing Defence Vehicles and on enquiry, it was found that the same were not genuine. Accordingly, vide order dated 05.05.2014, tax of ₹1,46,53,414/- was imposed along with interest upon the petitioner along with penalty under Section 38 read with Section 9(2) of the CST Act, totalling to the tune of ₹3,66,33,535/-.

5. The petitioner preferred an appeal before the First Appellate Authority, which asked for furnishing bank guarantee for the tax and interest element and eventually, the appeal was dismissed on 19.11.2014, in pursuance to which, the bank guarantee was encashed on 24.11.2014, against which, the petitioner is, now, aggrieved for not been given prior intimation before encashing.

6. A perusal of the written statement, filed by the State, would go on to show that the bank guarantee was expiring on 29.11.2014 and in the absence of any stay, the same was got encashed on account of only a period of 4-5 days remaining with the respondents to take action, in the peculiar facts and circumstances, to safeguard the interest of the Revenue. It is also pertinent to mention that the bank, admittedly, informed the petitioner at that point of time, on 24.11.2014 itself regarding the demand of the unconditional invocation of the Assessing Authority-cum-Excise & Taxation Officer. The petitioner, at that stage, admittedly, also gave his concurrence to the encashment of the bank guarantee, as per letter dated 24.11.2014 (Annexure R2), which was addressed to the bank. The same reads as under:

> "Dear sir
> You are issued a bank guarantee No.003GT01142460015 in favour of Assessing Authority-cum-Excise and Taxation officer Sector-12, Faridabad (East) for Rs.1,46,00,000/- (Rs.One Crore Fourty Six Lakh Only) Against FDR no-50300053177422 and 503000053108098 FDR amount for Rs.1,00,00,000/-. You are authorized to debit balance amount in account no-50200003880781.
> Please cash the Bank Guarantee."

7. A further perusal of the recovery notice under the Land Recovery Act dated 24.11.2014 (Annexure R1) would go on to show that recovery was only made regarding the bank guarantee which has already been done. In such circumstances, once the petitioner himself has given his consent for the recovery of the tax amount along with interest, in view of being unsuccessful in appeal, we are of the opinion that subsequently, the petitioner had a change of heart and has approached this Court on the ground that since he had filed the appeal thereafter, the amount should be refunded to him and it was wrongly encashed, without giving him prior notice.

8. In such circumstances, we are not inclined to grant any relief for the refund of the amount, during the pendency of the appeal. In case the petitioner is successful, he will be entitled to the said amount which the State has encashed. Needless to say anything said herein is only for the purpose of deciding the present writ petition and the appeal of the petitioner will be decided on its own merits.

9. The only issue, thus, remains is that in pursuance of notices issued (Annexure P5), whether the balance penalty amount is liable to be recovered during the pendency of the appeal before the Tribunal, which is, at present, non-functional. Counsel for the petitioner has submitted that the petitioner shall furnish adequate security, to the satisfaction of the Assessing Authority, in the manner prescribed under Section 33(5) of the VAT Act.

10. Accordingly, the petitioner is granted the benefit of protection of recovery of the amount in dispute, during the pendency of the appeal, subject to the Assessing Authority being satisfied regarding the furnishing of adequate security, as prescribed under Section 33(5) of the VAT Act, within a period of 4 weeks from today. In the meanwhile, the recovery of the balance amount would not be made by resorting to any coercive method by the State.

11. Writ petition is, accordingly, disposed of.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

12.05.2015
sailesh