IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2606 of 2015 (O&M)
Date of Decision: 12.3.2015

M/s Beetel Teletech Limited

…..Petitioner

versus

State of Haryana and others

....Respondents

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

Present : Mr. Aman Partap and Mr.Amrinder Singh, Advocates for the petitioners.

Ms. Mamta Singla Talwar, AAG Haryana.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE: (Oral)

CM No.3157 of 2015

CM is allowed.

Document (Annexure P-6) is taken on record.

CWP No.2606 of 2015

Rule. Rule returnable forthwith and heard finally.

2. The petitioner has challenged the communication dated 9.2.2015 (Annexure P-1) of respondent No.2-Excise and Taxation Officer-cum-Assessing Authority encashing the bank guarantee issued by respondent No.4 - Kotak Mahindra Bank at the request of the petitioner and in favour of respondent No.2. This guarantee in the sum of ₹1.75 Crores was furnished in the appeals filed by the petitioner before respondent No.3 – Joint Excise and Taxation Commissioner

(Appeals) (for short `JETC') and was sought to be encashed after arguments had been heard but judgment had not been pronounced. The same was stayed by interim order dated 12.2.2015 by the court. Subsequently, during the course of writ petition, respondent No.3 – JETC, passed the order in the appeal on 30.1.2015 (Annexure P-6). The Assessing Officer had assessed the petitioner to Haryana VAT and to Central sales tax by a common assessment order. As it was a common assessment order, the petitioner filed a single consolidated appeal challenging the same as regards levy HVAT and CST. The JETC by the order dated 30.1.2015 in the appeal remanded the matter as far as the interest component on HVAT was concerned. The Assessing Authority is still to pass the fresh order pursuant to the remand order. It would not be proper therefore, at this stage to invoke the bank guarantee in respect of the interest demanded on the dues towards the HVAT. As far as the principal amount is concerned, the petitioner in any case has not been successful in challenging the same and the petitioner has already paid the same. By the said order dated 30.1.2015, the JETC dismissed the appeal insofar as it related to the CST assessed by the Assessing Officer on the ground that a single consolidated appeal was not maintainable. The appeal, therefore, insofar as related to the assessment of CST was dismissed not on merits but on a technicality.

3. We do not consider it necessary to decide whether this view was correct or not. In other words it is not necessary atleast at this stage to decide as to whether a consolidated appeal is maintainable. It would be open to the petitioner to file a separate appeal against the order of the Assessing officer in relation to the assessment of the CST. The issue to say the least debatable. If there is a power to condone the delay, we see no reason why the delay should not be condoned in such circumstances. The ends of justice would demand the same.

4. In the event of an appeal being filed the guarantee that has already been issued would naturally continue pending such appeal.

5. In these circumstances, the writ petition is disposed of by the following order:

> The respondents are restrained from the receiving any amount under the said bank guarantee until after the expiry of a period of four weeks from the date of the assessment order by the Assessing Officer with respect to the interest on HVAT and the decision in the appeal before JETC against the assessment of CST whichever is later.
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> This order is subject to the appeal before the JETC being filed on or before 15.4.2015.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

12.3.2015
Meenu

(G.S.SANDHAWALIA)
JUDGE