IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3765-2015
Date of decision:- 02.03.2015

Hamdard (Wakf) Laboratories

...Petitioner

Versus

The State of Haryana and others

...Respondents

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

Present: Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Pankaj Gupta, Advocate,
for the petitioner.

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S.J. VAZIFDAR, A.C.J. (ORAL)

Issue notice of motion returnable forthwith.

Ms. Mamta Singla Talwar, learned Additional Advocate General, Haryana accepts notice on behalf of all the respondents.

The petitioner has challenged the invocation of a bank guarantee and has also sought a writ to set aside the first appellate order dated 04.07.2014 (Annexure P-5), a demand notice dated 20.02.2015 (Annexure P-6) and a letter dated 24.02.2015 (Annexure P-7) whereby the bank guarantee was sought to be encashed. The petitioner has further sought a writ of mandamus directing the respondents to treat its product as a drink assessable under entry 100 D of Schedule C of the Haryana Value Added Tax Act, 2003 (in short the Act). The respondent No. 1 has by an opinion dated 01.03.2013 (Annexure P-2) rendered under Section 56(3) of the Act held the petitioner's product to be assessable under the residuary article entailing a tax at the rate of 12.5%. Under entry 100 D, the assessment is at 4%.

2. By an order dated 29.10.2014 (Annexure P-4) in CWP-14192-2014, a Division Bench of this Court observed prima-facie that the show cause notices were issued without jurisdiction and stayed the operation of Annexure P3 which, we are informed, is the said opinion dated 01.03.2013. The assessment order dated 28.11.2013 (Annexure P/4-A) in the present case and the order passed by the First Appellate Authority proceed on the basis of the opinion dated 01.03.2013. The operation of that opinion having been stayed by the order of the Division Bench dated 29.10.2014 (Annexure P-4) subsequently the recovery on the basis of the assessment order against the petitioner thus is not justified. Had the assessment order been on the basis other than merely the opinion it may have been a different matter altogether.

3. By the said order dated 29.10.2014, the counsel for the State was directed to have instructions with respect to the constitution of the Haryana VAT Tribunal. The Division Bench observed that in view of the failure to constitute the Tribunal, this Court is flooded with appeals. The learned counsel appearing on behalf of the State of Haryana states that the Tribunal is soon to be constituted. There is, however, some difficulty on the part of the State Government in this regard in view of another writ petition in which the question of the mode and manner of appointment has been raised.

4. Be that as it may, the petitioner cannot be faulted for not having moved the appeal against the opinion of the respondent No. 1. We see no reason at this stage at least to consider the issue on merits. The petitioner is at liberty to file an appeal under Section 33(6) of the Act before the Appellate Tribunal. In view of the operation of the opinion dated 01.03.2013 having been stayed, it would be only fair to restrain the respondents from invoking the bank guarantee at this stage. The issue as to whether the bank

guarantee ought to be extended or modified can be considered in CWP-14192-2014 which has challenged the said opinion. Further the interest of the respondents can be safeguarded by directing the petitioner to keep the bank guarantee alive from time to time.

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

The respondents shall not invoke the bank guarantee without the leave of the Court. No further coercive action shall also be taken without the leave of the Court.

This order is, however, subject to the petitioner keeping the bank guarantee alive till otherwise ordered by this Court or by the Appellate Tribunal as the case may be. The bank guarantee shall be renewed four weeks prior to the expiry thereof failing which the respondents shall be entitled to invoke the same and receive the proceeds pursuant thereto. The petitioner shall not dispose of any of its immovable properties without the leave of the Court or the Appellate Tribunal as the case may be.

This order does not prevent the Tribunal when constituted from proceeding with the matter. It will also be open to the Court in CWP-14192-2014 to modify this order as well as the order restraining the respondents from taking coercive action.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

02.03.2015
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