IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5824-2015 (O&M)
Date of decision:- 01.04.2015

All India Steel Re-rollers Association (Regd.)
...Petitioner
Versus

Union of India and others
...Respondents

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate,
with Mr. Nirbay Garg, Advocate,
and Mr. Vishal Deep Goyal, Advocate,
for the petitioner.

Ms. Urvashi Dhugga, Advocate,
for the respondents.

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

The petitioner claims to be an Association registered under the Societies Registration Act, 1860. It claims a membership of about eight hundred persons, nine of whom have joined this petition.

2. The petitioner seeks a general order quashing notices of demand served by the Income Tax authorities under Section 156 and notices for demand of penalty under Section 271 read with Section 274 of the Income Tax Act, 1961 (in short the Act). The assessment proceedings in respect of some of the members have concluded. It is in respect of such members that the impugned notices have been issued and challenged. Some of these members have also filed appeals before the CIT (Appeals). The petitioner seeks a general order quashing of such notices that have been issued under Sections 156 and 271 read with Section 274 of the Act. It is not possible to grant such omnibus reliefs.

3. The petitioner contends that the assessments have been made on the incorrect assumption that there is a co-relation between the electricity

consumption and the production. We do not have the benefit of the assessment orders, if any, in respect of the eight hundred members. Only sample orders have been annexed to the petition. Even if the orders of all the petitioners' members had been annexed, it would have made no difference. Each case must be determined on the basis of its own facts. There are several variables, as rightly pointed out by Dr. Sidhu, learned senior counsel appearing on behalf of the petitioner. There may be for instance cases where the machinery utilized by one manufacturer may be more efficient than the one used by another manufacturer. The electricity consumption, therefore, would naturally be less. Then again, the maintenance of machinery by one manufacturer may be better than that of the other manufacturer leading to less consumption of electricity.

4. Ms. Urvashi Dhugga, learned counsel appearing on behalf of the respondents also does not contend that there is an absolute rule that in all cases the production would be assessed only on the basis of the electricity consumption. She rightly agrees that it must depend upon the facts and circumstances of each case.

5. In these circumstances, the petition at the instance of the Association of such assessees cannot be entertained. Each of the assessees must challenge the assessment orders independently as per the provisions of the Act.

6. Dr. Sidhu relied upon a judgement of the Division Bench of the Andhra Pradesh High Court in the case of *N. Raja Pullaiah and others Vs Dy. Commercial Tax Officer, Kurnool and another*, 1970 AIR (A.P.) 125. It must be noticed, however, that in that case the petitioners had challenged the assessment orders in appeal. Under the provisions then in force, the appeals could be heard and disposed of only on payment of the assessed tax. As the assessees were unable to pay the same, their appeals were dismissed for

non-payment of taxes. It is in these circumstances that they invoked the writ jurisdiction. The Division Bench noted that in similar cases, the Tribunal itself had set aside the assessments in view of the wide disparity in electricity consumption from mill to mill for the required quantity of oil yield. Under the Income Tax Act, however, the concerned assessees can always seek a stay of the demand.

7. The petition is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

01.04.2015
Amodh