IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6226 of 2015
Date of decision:09.04.2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

CWP No.6218 of 2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

CWP No.6219 of 2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

CWP No.6220 of 2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

CWP No.6222 of 2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

CWP No.6229 of 2015

Punjab State Civil Supply Corporation Ltd.

....Petitioner

Versus

Union of India & others

......Respondents

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

Present: Mr.Pankaj Jain, Sr.Advocate
with Mr.Divya Suri, Advocate,
Mr.Sachin Bhardwaj, Advocate
Mr.Gaurav Mittal, Advocate,
Mr.R.M.Garg, Advocate
and Mr.Deepanshu Jain, Advocate, for the petitioner(s).

Mr.Yogesh Putney, Advocate, for the respondents.

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

1. The writ petitions bearing CWP Nos.6226, 6219 to 6220, 6222 & 6229 of 2015, are similar and are, therefore, disposed of by a common order and judgment.

2. The petitioner has challenged the orders dated 09.07.2014 (Annexure P9), 25.09.2014 (Annexure P13) and 12.03.2015 (Annexure P18). The last order rejected the petitioner's application for stay of the demand.

3. The petitioner is a Government of Punjab undertaking. It undertakes trade, purchase, storage movement including inter-state movement, distribution and sale of foodgrains and other food stuffs. The petitioner also engages itself in various other public utility services. For the purpose of this petition, it is necessary to note that the primary objects are for governing, procurement and supply of foodgrains within the State of Punjab on the behest of the State

Government and in the interest of the farmers scattered over the different Districts within the State of Punjab and balancing the supply of the foodgrains in accordance with the policies made by the Food Corporation of India (for short, the 'FCI') at the behest of the Union of India. It is also important to note that the petitioner is granted cash credit limit by the Reserve Bank of India for the procurement of foodgrains, every year. Similar facilities are extended to other similar agencies as well.

4. The petitioner procured paddy and paid the farmers for the same. The paddy is then given to the millers. After milling, the millers send the rice directly to the FCI, which in turn, distributes the same in accordance with its policy. There remains with the millers residual products such as husk, rice-bran. These are merely by-products. The petitioner's case is that it is not concerned with the same and that it does not charge for the same separately. The Assessing Officer, however, came to the conclusion that the by-products also have some value and therefore, TDS ought to have been deducted in respect thereof. The Assessing Officer, therefore, imposed tax to the extent of ₹15 crores, in the above writ petitions, pertaining to the assessment years 2012-13 and 2013-14.

The petitioner has filed an appeal before the Commissioner of Income Tax (Appeals), Chandigarh (for short, the 'CIT') in respect of the demand to this extent. The appeal is pending. The petitioner has made an application for early hearing. Probably due to the exigency of the Board, the CIT has not been able to hear the appeal so far. The question is whether the petitioner ought to have been granted a stay or not.

5. The impugned orders do not address the relevant questions while considering the application for stay. For instance, the question as to whether the petitioner has a *prima facie* case or not, has not been adverted to. We are unable to say that the petitioner has no case whatsoever, at this stage. *Prima facie* at

least, the judgment of the Division Bench of the Andhra Pradesh High Court in ***Food Corporation of India Vs. State of Andhra Pradesh (1999) 115 STC 148*** although in relation to a sales tax matter held that there was nothing to show that the transfer of property in similar by-products was by way of sale. Whether this judgment is applicable or not, in the present case, is a matter for the CIT to consider. Suffice it to state for the purpose of these petitions that the judgment would require consideration.

6. The impugned orders do not even address the question of balance of convenience. As mentioned earlier, the petitioner is operating in the whole of the State of Punjab. They are engaged essentially in public utility services of a very important nature, namely, the procurement and distribution of foodgrains throughout the State of Punjab. They are funded by the Reserve Bank of India/Union of India. Although the turnover is around ₹12,000 crores, their profits is only about ₹1 crore. If the amounts lying in their bank accounts are frozen, at this stage, it would cause enormous inconvenience, harm and prejudice, not only to the petitioner but to the public in general. This important fact persuades us to grant stay in favour of the petitioner. We do not grant the stay, at this stage, merely because the petitioner has a arguable case. That is but one factor.

7. The impugned order merely stated that the factors mentioned in the circular of the CBDT dated 02.12.1993 are absent. The CBDT circular only contains illustrative situations, as noted in the impugned order dated 09.07.2014 itself. It is certainly not exhaustive of the grounds on which a stay can be granted and the grounds which ought to be taken into consideration in an application for grant of stay. The impugned order dated 25.09.2014 merely records that the petitioner has not given a schedule of payment. The last order impugned in these petitions, namely, the order dated 12.03.2015 merely observes that despite

various opportunities, the petitioner had failed to submit any proposal/schedule to pay the demand and that the petitioner has not furnished any reasonable cause for not paying the demand. An assessee not paying the demand or not agreeing to do so in instalment, would not be a ground for rejecting the grant of stay, if the assessee is entitled to the same.

8. In the exceptional facts and circumstances of the case, the petitioner is entitled to a stay of the demand, pending the hearing and of the final disposal of the appeal. The impugned orders dated 09.07.2014 (Annexure P9), 25.09.2014 (Annexure P13) and 12.03.2015 (Annexure P18) are, therefore, set aside. No coercive steps shall be taken pending the hearing of the appeal before the CIT.

The writ petitions are, accordingly, allowed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

09.04.2015
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