

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.15426 of 2015 (O&M)

Date of decision: 26.9.2016

Bhushan Power & Steel Limited

..... Petitioner

Versus

The State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

None for State of Bihar-respondent No.3.

RAJESH BINDAL, J

1. Challenge in the present petition is to the order dated 30.4.2015 passed by the Central Sales Tax Appellate Authority, New Delhi (for short 'the Appellate Authority') in appeal filed by the petitioner against the order dated 6.5.2010 passed by the Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') in Appeal (VAT) No.621 of 2009.

2. Learned counsel for the petitioner submitted that the petitioner is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture and sale of iron and steel goods including galvanized steel pipes. It has branches in different States, one of which is situated at Patna in the State of Bihar. Tenders for purchase of galvanized steel pipes were floated by the State of Bihar in June, 2006. The petitioner participated in the tendering process and was successful. The

material was transferred from the manufacturing unit of the petitioner

located in the State of Punjab to its branch office at Patna and thereafter local sale was made in the State of Bihar. As a consequence, local sales tax was paid under the Bihar VAT Act, 2005.

3. The assessment of the petitioner for the year 2006-07 was framed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II under the Central Sales Tax Act, 1956 (for short, 'the Act') on 13.1.2009 and the stock transfer to the tune of ₹ 11,54,54,462/- was treated to be inter-state sale, as on the goods transferred by the petitioner to its branch office at Patna for sale to Government of Bihar were having the engraving of 'GOB'. As a result, additional tax demand of ₹ 95,80,793/- was created. The assessing authority also imposed interest and penalty. The order was upheld in first appeal. The Tribunal set aside the penalty while upholding the demand of tax.

4. Still aggrieved against the order passed by the Tribunal, the petitioner preferred appeal before the Appellate Authority under Section 20 of the Act. Vide impugned order dated 30.4.2015, the appeal was rejected, as the Appellate Authority also found that the transaction in question was in the course of inter-state sale and not a branch transfer. Alternative submission made by learned counsel for the petitioner before the Appellate Authority regarding refund of the amount of tax paid by the petitioner on the local sale in the State of Bihar on the same goods, was not considered, despite there being enabling provisions to that effect under Section 22 (1A) of the Act. Further relying upon judgment of Hon'ble the Supreme Court in Columbia Sportswear Company vs. Director of Income Tax, (2012) 346 ITR 161 (SC), it was submitted that this Court has power of judicial review of the orders passed by the Appellate Authority, which was constituted in

terms of the directions issued by Hon'ble the Supreme Court in Ashok Leyland Ltd. vs. Union of India and others, (1997) 105 STC 152 (SC). He further referred to the order passed by the Appellate Authority in Hindustan Zinc Limited vs. State of Andhra Pradesh and others, (2012) 47 VST 1 (CSTAA), where under similar circumstances, the Appellate Authority directed for transfer of refundable amount from the State, where it was paid on the local sale to the State from where sale in the course of inter-state sale, was affected. The prayer is that the Appellate Authority having failed to exercise the jurisdiction vested in it under Section 22 (1A) of the Act, the matter deserves to be remitted back to the Appellate Authority.

5. Learned counsel for the State of Punjab submitted that till such time the petitioner is not disputing the fact that the transaction in question was in the course of inter-state sale from the State of Punjab to the State of Bihar, the State of Punjab does not have any objection to the matter being remitted back to the Appellate Authority for consideration of the prayer made by the petitioner.

6. Despite service, no one has appeared for the State of Bihar though impleaded as respondent No.3 in the petition.

7. Heard learned counsel for the parties and perused the paper book.

8. The petitioner in the present case participated in the tendering process for sale of galvanized steel pipes, as floated by the Government of Bihar. After being successful, the goods manufactured with the marking 'GOB', were dispatched by the petitioner from State of Punjab to its branch office at Patna in the State of Bihar for further local sale to the department concerned in the State of Bihar. It is claimed that the State sales tax in the shape of VAT was paid on that local sale transaction in the State of Bihar.

As goods were already appropriated before dispatch thereof from the State of Punjab, at the time of assessment, the claim made by the petitioner that it was a transaction of branch transfer, was rejected and the same was treated as inter-state sale and tax was levied. It was upheld by the Tribunal.

9. In Ashok Leyland Ltd.'s case (supra) dealing with a problem where initially the sale from State 'A' to State 'B' was treated as branch transfer. In State 'B', it was treated as a local sale. However, subsequently State 'A' sought to revise orders and treat the sale in the course of inter-state trade instead of branch transfer already allowed, Hon'ble the Supreme Court observed that there is no mechanism to resolve these kinds of inter-state issues, the Government was required to consider the same. As a consequence thereof, Chapter VI containing Sections 19 to 26 was added in the Act.

10. Section 19 of the Act provides for constitution of the Central Sales Tax Appellate Authority.

11. Section 20 of the Act provides that an appeal shall lie to the Appellate Authority against any order passed by the highest Appellate Authority of a State under the Act determining the issues relating to stock transfers or consignments of goods, in so far as these involve a dispute of inter-state nature.

12. Section 21 of the Act provides for procedure for filing of appeals. Whereas Section 22 provides for the powers of the Appellate Authority. Procedure to be followed by the Appellate Authority has been provided for in Section 23 thereof.

13. Section 24 of the Act provided that the Appellate Authority for Advance Rulings as constituted under the Income Tax Act, 1961 shall be

notified as the Appellate Authority under this Act.

14. Section 25 of the Act provides for transfer of pending proceedings, whereas Section 26 thereof provides for binding nature of the orders passed by the Appellate Authority on all State Governments.

15. Section 22 (1B) of the Act, which is relevant for the controversy in dispute, is reproduced hereunder:-

“Section 22 (1B): The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction:

Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction.”

16. Section 22 (1B) of the Act clearly provides that the authority has power to issue direction for refund of the tax collected by a State, which has been held by the Appellate Authority to be not due to that State or alternatively direct the State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, the amount of refund or transfer is limited to the amount of central sales tax payable on the transaction.

17. In the case in hand, highest Appellate Authority under the State Act had decided the issue vide order dated 30.4.2015. In terms of the provisions of Section 20 of the Act, the petitioner preferred appeal before the Appellate Authority while disputing the findings recorded by the Tribunal holding the transaction to be inter-state sale. Alternative plea was

raised that the amount of tax paid in the State of Bihar treating the sale to be local sale there, be directed to be refunded to the appellant or transferred to the State of Punjab.

18. The Appellate Authority vide impugned order opined that the view expressed by the Tribunal opining the transaction to be inter-state sale from the State of Punjab, was correct. The State of Bihar was also party before the Appellate Authority. The alternative prayer made by the petitioner regarding refund or transfer thereof to the State of Punjab was not dealt with. With this grievance, the petitioner has approached this Court.

19. The issue regarding jurisdiction of this Court to go into the order passed by the Appellate Authority was considered by Hon'ble the Supreme Court in Columbia Sportswear Company's case (supra). Observations made by the Appellate Authority in order passed by it in Groupe Industrial Marcel Dassault, In re (2012) 340 ITR 353 (AAR), wherein it was opined that it would be appropriate if against the ruling of the Appellate Authority direct application for Special Leave to Appeal is entertained by Hon'ble the Supreme Court, were referred to. Rejecting the aforesaid view, it was opined that the order passed by the Appellate Authority can be challenged before the High Court under Article 226 and/or 227 of the Constitution of India. However, the petition challenging the same has to be heard by a Division Bench of the High Court and decided as expeditiously as possible. The appeals were disposed of while giving liberty to the parties therein to approach the High Court under Article 226 and/or 227 of the Constitution of India. Relevant paras thereof are extracted below:-

“12. In a recent advance ruling in *Groupe Industrial Marcel Dassault, In re* [2012] 340 ITR 353 (AAR), the

Authority has, however, observed:

“But permitting a challenge in the High Court would become counter productive since writ petitions are likely to be pending in High Courts for years and in the case of some High Courts, even in Letters Patent Appeals and then again in the Supreme Court. It appears to be appropriate to point out that considering the object of giving an advance ruling expeditiously, it would be consistent with the object sought to be achieved, if the Supreme Court were to entertain an application for Special Leave to appeal directly from a ruling of this Authority, preliminary or final, and render a decision thereon rather than leaving the parties to approach the High Courts for such a challenge.”

We have considered the aforesaid observations of the Authority but we do not think that we can hold that an advance ruling of the Authority can only be challenged under Article 136 of the Constitution before this Court and not under Articles 226 and/or 227 of the Constitution before the High Court. In *L. Chandra Kumar v. Union of India* (supra), a Constitution Bench of this Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. Therefore, to hold that an advance ruling of the Authority should not be permitted to be challenged before the High Court under

Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible.”

20. Though, a specific plea was raised by the petitioner before the Appellate Authority that the transaction, which has been held to be inter-state sale from the State of Punjab and tax paid thereon, was treated to be local sale in the State of Bihar and tax was paid on the same, however, that aspect was not considered by the Appellate Authority with reference to the alternative claim made by the petitioner in terms of the provisions of Section 22 (1B) of the Act, regarding refund or transfer of the tax from the State of Bihar to the State of Punjab.

21. As the Appellate Authority failed to exercise its jurisdiction on the plea raised by the petitioner, in our opinion, without even disturbing the findings recorded by the Appellate Authority regarding transaction being in the course of inter-state sale from the State of Punjab, the matter deserves to be remitted back to the Appellate Authority for dealing with the alternative

prayer made by the petitioner.

22. With the aforesaid observations, the petition stands disposed of. The matter is remitted back to the Appellate Authority to consider and decide the leftout issue, as referred to above.

23. The date of hearing shall be fixed by the Appellate Authority with prior intimation to the parties concerned.

(RAJESH BINDAL)
JUDGE

(DARSHAN SINGH)
JUDGE

26.9.2016

sharmila

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No