IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 22196 of 2013
Date of decision : July 11, 2018

Kulbir Singh

.... Petitioner

Versus

Additional Deputy Commissioner and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Manu K. Bhandari , Advocate
for the petitioner.

Mr. Umesh Aggarwal, Advocate
for respondent Nos. 2 and 3.

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<u>RAKESH KUMAR JAIN, J (oral).</u>

The petitioner is aggrieved against the order dated 5.6.2012 and subsequent order passed by respondent No.1 dated 15.7.2013 by which he has been asked to pay the additional amount. The petitioner is the proprietor of M/s Star Service Station which is being run at plot No.E-106, Industrial Area, SAS Nagar, Mohali. The petitioner has got MS supply electricity connection provided to it by the Punjab State Power Corporation Limited (for short 'the Corporation'). The petitioner is engaged in the business of car repair and service which has been declared to be small scale industry by the Punjab Small Industries and Export Corporation on 1.1.2002. The cause of action for this petition arose when the premises of the petitioner was checked on 21.1.2010 by the employees of the Corporation in which the petitioner was found using more electricity than the sanctioned load and thus a penalty of ₹27,852/- was imposed which was paid by the petitioner. It was also allegedly found that the petitioner is

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using some part of the connected load of about 17 KW for the purpose of running the service station. According to the Corporation, it was an un-authorized use of electricity and therefore, proceedings under Section 126 of the Electricity Act, 2003 were initiated by serving upon the petitioner an order of provisional assessment of ₹3,54,821/- followed by a final order and in order to avail the right of appeal the petitioner deposited ₹1,77,441/- and filed the statutory appeal under Section 127 (2) of the Act before the appellate authority which was allowed on 30.12.2010 and the matter was remanded back to the Assessing officer to pass the order again. The Assessing officer maintained his order which led to the filing of appeal again by the petitioner on 15.3.2011. While the said appeal was pending, the appellate authority sought advise from the Chief Engineer/Commercial Sale 2, PSPCL as to whether the establishment being run by the petitioner was within the definition of industry or and whether the activity done on the part of the petitioner in the demised premises is industrial or commercial. The appellate authority received information vide letter dated 25.11.2011 sent by the Chief Engineer/Commercial PSPCL, Patiala by which the appellate authority was informed that as per instructions dated 27.7.2011 received from the PSPCL all the IT/ITES Communication and Electronics Industry, knowledge parks & Bio technology industries are to be levied according to their nature of job. According to this letter "even if the service tax is exempted should be covered under 'NRS' category and the electricity connections to those units which are liable to pay Excise Duty, even if exempted from payment of Excise Duty, may be covered under 'Industrial tariff".

According to this letter, the tariff was to be charged as

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per nature of the activity/job and since the petitioner was running service station, therefore, it was deemed to be a service being provided and thus, the petitioner was held to be doing commercial activity in the premises on the basis of which the appellate authority held that the petitioner is liable to pay the commercial charges. Accordingly, vide Memo No. 1758 dated 15.7.2013 the petitioner was asked to pay the total amount of ₹6,92,235/- which was allegedly for a period which was not even in dispute.

Be that as it may, argument of learned counsel for the petitioner is that firstly, the letter dated 25.11.2011 was totally uncalled for as the appellate authority could not have asked for advise from PSPCL who was the respondent in the appeal and secondly the said instructions dated 27.7.2011 are not applicable as it applies to only IT/ITS industry.

Learned counsel for the Corporation could not deny this fact that the letter dated 27.7.2011, modifying the earlier instructions of the year 2009, were pertaining to the IT Industry and not the industry like the one in which the petitioner was engaged. He has also fairly conceded that the appellate authority could not have asked for advise of the respondents to take the decision.

I have heard learned counsel for the parties and perused the paper book with their able assistance and am of the considered opinion that the appellate authority has committed a patent error in relying upon the instructions dated 27.7.2011 to decide the *lis* against the petitioner. Firstly, the instructions are not applicable as the checking had taken place in the year 2010 and at that time the policy of the year 2009 of the State of Punjab was not in operation and secondly, the said instructions are applicable to IT Industries whereas the petitioner is running a car repair shop/service station.

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Thirdly, the business which is being carried out by the petitioner has already been declared to be small scale industries by the Punjab Small Scale Industries and Export Corporation on 1.1.2002 and also the list provided by the respondents in which it is mentioned that the petitioner is not running a commercial establishment.

All these reasons are sufficient for this Court to hold that the impugned order is patently erroneous, therefore the writ petition is allowed and the final assessment order as well as the order passed under Section 127 of the Act by which appeal of the petitioner was dismissed is set aside. A direction is also issued to the respondents to refund the amount deposited by the petitioner at the time when he had filed the appeal within a period of one month from the date of receipt of certified copy of this order.

(RAKESH KUMAR JAIN)
JUDGE

July 11, 2018
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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