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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 132 of 2019

M/s Shivshankar Solvent Extraction Private Limited R-2, Vaishali Nagar, Green Paradize, Private Limited, Raipur, District Raipur Chhattisgarh Through Its Director Sudhir Kumar Singhal, S/o Late Shri Ratan Lal Singhal, Aged About 54 Years, R/o. Sundarganj Ward In Front Of P.D.P. Company's Street, Dhamtari, District Dhamtari Chhattisgarh

---- Petitioner

Versus

- Commissioner, Commercial Tax, Civil Lines, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioner : Mr. Palash Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23.10.2019

1. The challenge in the present writ petition is to Annexure P-1 dated 05.03.2019 passed by the Chhattisgarh Commercial Tax Tribunal, Raipur in Second Appeal Case No. A/229/45/2018/Prantiya.

2. The facts of the case in brief are that the petitioner establishment proceeded for an assessment under the provisions of the VAT Act for assessment year 2008-09. The learned Commercial Tax Officer, Raipur vide its order dated 23.02.2017 assessed the tax liability of the petitioner to the tune of Rs.35,84,078/-. This order dated

23.02.2017 was subjected to challenge before the Chhattisgarh Commercial Tax Tribunal. The petitioner preferred an appeal under Section 48 of the Chhattisgarh VAT Act, 2005. The Tribunal vide impugned order dated 05.03.2019 rejected the appeal on the ground of the pre-deposit not being made. This order dated 05.03.2019 passed by the Tribunal was subjected to challenge before the Division Bench of this High Court in Tax Case No. 68/2019. The said case was disposed of on 04.09.2019 whereby the petitioner withdrew the tax case on the ground that the said case would not be maintainable and it would be a writ petition under Section 226 of the Constitution of India that need to be filed to challenge the impugned order. Subsequently, the present writ petition has been filed which has come up for hearing today.

3. Counsel for the petitioner relying upon a judgment of the Division Bench of Punjab and Haryana High Court in the case of Punjab State Power Corporation Limited Vs. State of Punjab and others decided on 23.12.2015 submits that the Tribunal ought to have considered waiver of mandatory requirement of pre-deposit in the event the petitioner was able to show that the establishment does not have sufficient means because of some compelling circumstances to make the mandatory deposit at the time of appeal. He submits that the Punjab and Haryana High Court allowing the writ petition had conferred the inherent powers to the Tribunal therein to consider the case of each of the appellants for waiver of pre-condition and then pass an appropriate order thereby holding that the mandatory deposit required as a pre-condition for filing of the appeal was only directory and that the Tribunal otherwise has inherent powers in a given case provided the appellant makes out a strong case in this regard. Thus, counsel for the petitioner prayed for a similar relief in the instant case also and for remanding the matter to the Tribunal below permitting the petitioner to pursue the appeal on its merit after granting due waiver of the mandatory deposit as is required.

4. At this juncture, it would be relevant to take note of the observations made by the Division Bench of this Court in Tax Case No. 68/2019 filed by the petitioner assailing the very same order dated 05.03.2019 which is under challenge in the present writ petition. For ready reference paragraph-3 of the said order is reproduced hereinunder:

> "During the course of hearing, it is noted that the petitioner has specifically stated in 'Ground 6' of the proceedings that the Tribunal ought to have granted an opportunity to the Appellant to effect the minimum deposit of 20%. It is stated that, the Appellant/Assessee, after striving hard, has made necessary arrangement to meet the requirement in this regard."

5. A plain reading of the aforesaid observation of the Division Bench makes it clear that in due course of time, the petitioner had made arrangement to meet the requirement as is required Sub Section 4 of Section 48 of the Act of 2005. It would be relevant at this juncture to take note of the notice issued by the Tribunal to the petitioner dated 03.11.2018 in the aforesaid appeal whereby the Tribunal had called upon the petitioner for removing the default particularly in respect of the pre-condition of mandatory deposit.

6. Reading the notice issued by the Tribunal to the petitioner dated 03.11.2018 granting time to the petitioner to cure the default of mandatory deposit and reading paragraph-3 of the order of the Division Bench passed in Tax Case which was based on the 'Ground No.6' of the proceedings, this Court is of the view that the petitioner has by now made sufficient arrangement for meeting the pre-condition required for filing an appeal and in a position to make the deposit.

7. Given the said facts and circumstances of the case and also taking into consideration the judgment of the Punjab and Haryana High Court in the case of Punjab State Power Corporation Limited (supra), this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Tribunal for deciding it on merits by granting 30 days time to the petitioner in making mandatory deposit before the Tribunal in Second Appeal Case No. A/229/45/2018/Prantiya. Subject to the petitioner making mandatory deposit within 30 days from the date of receipt of copy of this order, Second Appeal Case No. A/229/45/2018/Prantiya would stand restored and the Tribunal shall decide the appeal on its merit.

8. With the aforesaid direction, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

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