06.12.2021
1
ns/pg Ct.16

WPTT 5 of 2021

Vivekananda Oil Mill & anr.
Vs.
Sales Tax Officer, Howrah Charge & Ors.

Mr. Siddhartha Sankar Sengupta,
Mr. Samiddha Sankar Sengupta,
Mr. Sumit Ghosh .. for the petitioners.

Mr. Anirban Roy, Ld. G. P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh .. for the State.

The petitioners / assessees challenged an order passed by the West Bengal Taxation Tribunal (for short "the Tribunal") in RN No.428 of 2018 along with CAN 54 of 2018 whereby the RN and CAN applications were disposed of thereby setting aside the order dated August 16, 2017 passed by the Revisional Board and allowing the appropriate revisional authority to undertake suo moto revision under Section 85 of the WBVAT Act, 2003.

The petitioners challenged the assessment order dated August 17, 2012 passed by the Commercial Tax Officer under Section 46(1) of the West Bengal VAT Act, 2003 for the period of 4th quarter ending on March 31, 2010 before the appellate authority and such authority modified the assessment order by an order dated

01.02.2016. The order of the Appellate Authority was subsequently challenged before the West Bengal Commercial Taxes Appellate & Revisional Board (for short "the Board") in Revision (VAT) Case No.3919 of 2015-16. The Board by an order dated August 18, 2017 allowed the Revision (VAT) Case in part on contest thereby modifying the appellate order dated 1st February, 2016 passed by the Learned Joint Commissioner, Commercial Taxes, Howrah Circle. The Board passed the following order:-

i)G.T. is determined at Rs.4,21,69,127.81 to be taxed @ 4%

i) Imposition of purchase tax is deleted

ii) ITC is allowed at Rs. 16,69,568.62

iii) Late fee is determined at Rs.2000.00

iv) Penalty be re-determined @ 10% of tax payable u/s 16

The petitioners approached the Tribunal for giving effect to the order dated August 18, 2017 passed by the Board and to grant refund along with interest. In connection with such application, the respondent herein filed the CAN application praying, inter alia, for setting aside the order passed by the Board and for remanding the matter to the Board directing it to pass a fresh order.

Learned Advocate appearing for the petitioners submits that the assessment order passed is ex facie barred by limitation and the said order was an ante-dated one. He submits that before the Tribunal, the petitioners took the point that the assessment order was ex facie barred by limitation and the Tribunal did not return any finding on such issue. He further submits that the Taxation Tribunal in an application preferred at the instance of the writ petitioners for giving effect to the order of the Board could not have set aside the order passed by the Board at the instance of the respondent herein and that too, on an interlocutory application filed by them.

Mr. Debasish Ghosh, learned counsel appearing for the respondent submits that the petitioners herein suppressed the material facts and they have practiced fraud for which the Tribunal was justified in remanding the matter back to the revisional authority directing the revisional authority to exercise suo motu power of revision under Section 85 of the West Bengal VAT Act, 2003 by revising the appellate order. Mr. Ghosh submits that the Tribunal was justified in directing the Revisional Authority to decide the matter in view of the fact that the question of loss of revenue is involved in the instant case.

We have heard the learned counsel for the parties and have perused the materials on record.

The petition filed before the Tribunal by the writ petitioner was for execution of the order of the Board. At the first blush the argument of the learned counsel for the petitioner that the Tribunal exceeded its jurisdiction by setting aside the order sought to be executed in such proceeding appears to be attractive as the same is based on the principle of finality of litigation. However, after going through the materials on record this Court is of the view that such principle cannot be applied in the instant case as the revenue sought to make out a case before the Tribunal that the writ petitioner obtained the order from the Board by practicing fraud upon the appellate authority and the Board and is also guilty of suppression of material facts resulting in severe loss to the State exchequer. It is well settled that a judgment and decree obtained by playing fraud on the Court is nullity and non est in the eye of law.

The Hon'ble Supreme Court of India in the case of S.P.Changalvaraya Naidu (Dead) by LRS vs. Jagannath (Dead) by LRS & Ors. reported at (1994) 1 SCC 1 held that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation.

In the said reported case, in connection with an application for final decree for partition, an objection was raised that such preliminary decree was obtained by fraud. The application for final decree was dismissed after accepting the said objection.

Thus, by applying the said proposition of law and upon being prima facie satisfied with the case made out in the application filed by the revenue before the Tribunal, this Court is of the considered view that such issue is required to be decided and the learned Tribunal was thus justified in setting aside the order dated August 16, 2017 passed by the Board in Revisional (VAT) case no. 3919 of 2015-16.

The specific case of the writ petitioners before the Tribunal was that the assessment order was passed after the period of limitation and unsigned and time barred demand notice of the assessment was issued. The Tribunal refused to entertain the issue of limitation on the ground that the same cannot be raised at the execution stage. Such issue goes to the root of the matter and is also required to be decided.

However, since the claims and counterclaims of the parties are to be decided finally, this Court is of the considered view that the

Board shall be the appropriate forum for adjudicating the issues raised by the parties.

This Court therefore directs the Board to decide the matter afresh strictly in accordance with law and preferably within a period of three months from the date of communication of this order to the Board.

This Court directs that the issue of limitation raised by the petitioners before the Tribunal has to be decided first and thereafter proceed to decide the case on its merit.

We make it clear that the parties shall be entitled to raise all points before the Board and it will be open to the Board to decide such questions in accordance with law.

In light of the above order, the operative portion of the order passed by the Tribunal insofar as it relates to imposition of cost of Rs.50,000/- upon the dealers / writ petitioners herein stands set aside. A sum of Rs.7 lakhs already returned to the petitioners shall remain with the petitioners and abide by the direction of the Board.

The order impugned stands modified only to the extent indicated above. With the above direction WPTT 5 of 2021 stands disposed of.

After this order was dictated, the learned counsel for the petitioners submitted that pursuant to the order passed by the Tribunal, the revisional authority is proceeding with the suo motu revision in terms of Section 85 of the said Act. In view of the order passed by us, all steps taken in connection with the proceeding initiated by the Commissioner exercising the power of suo motu revision pursuant to the order of the Tribunal stands set aside and quashed.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)