IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12300/2021
Date of decision : 19.7.2021

M/s Khanna Petro Mart
.... Petitioner

versus

State of Punjab and others
... Respondents

Coram: Hon'ble Mr. Justice Jaswant Singh

Hon'ble Mr. Justice Sant Parkash

Present Mr. Sandeep Goyal,Advocate for the petitioner

Mr.Pankaj Gupta, Additional Advocate General, Punjab

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

Jaswant Singh, J. (Oral)

Petitioner, a partnership firm, is running a Petrol pump. It sells Motor Spirit (MS) and High Speed Diesel (HSD) after purchasing from public sector Oil Marketing Companies,which transactions are subject to Punjab Vat Act 2005. It is the case of the petitioner that during the course of its business activities, there is minor loss of MS and HSD due to evaporation, which is within the permissible limits of norms laid down by the Government of India, Ministry of Petroleum and Chemicals under the provisions of Essential Commodities Act. As per averments made in the petition, the books of accounts / purchase and sale records of the petitioner firm were examined and verified by the Assessing Officer, and assessment done for the years 2014-15 to 2018-19.

On the basis of said assessment orders passed for the year 2018-19, petitioner applied for refund of Rs.6,16,780/- on account of excess actual Input Tax Credit calculated on account of difference of Output Tax and Input Tax Credit due to permissible evaporation loss. It is further the case of the petitioner, that instead of allowing refund, Excise and taxation Officer-cum-Designated Officer-respondent no.3, vide Notice dated 22.2.2021 (P-7) initiated reassessment proceedings for the years 2014-15 to 2018-19 on the ground that there was apparent mistake on record and petitioner failed to produce relevant documents. Petitioner controverted the grounds taken in the notice by filing reply and alleged that the same was without jurisdiction as prior permission of the Commissioner was required under Section 29(7) of the Punjab Vat Act, which had not been obtained by the Designated Officer nor it was a case of rectification. However, similar notices (Annexure P-9 to P-12) were issued and ultimately respondent no.3 passed ex-parte orders dated 17.5.2021 (Annexure P-13 to P-17) by revising the assessment under Section 29(8) of the Punjab Vat Act. Hence the present petition seeking quashing of impugned orders dated 17.5.2021 (Annexures P-13 to P-17).

It is submitted by the learned counsel for the petitioner that the impugned orders are against the principles of natural justice as neither there is mention of the reply filed by the petitioner nor said reply has been considered and instead it has been mentioned in the impugned orders that petitioner failed to submit any reply.

Learned Additional Advocate General, who enters appearance on behalf of State of Punjab admits that reply filed by the petitioner has not been taken into consideration while passing the impugned orders.

In view of the above, the impugned orders dated 17.5.2021 (P-13 to P-17) are set aside and the matter is remanded to respondent no.3 for fresh decision, after giving opportunity to the petitioner.

Let the petitioner appear before respondent no.3 on 24.8.2021 or on any other date as fixed by respondent no.3. Thereafter fresh order(s) be passed in accordance with law.

Disposed of accordingly.

(Jaswant Singh)
Judge

19.07.2021
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(Sant Parkash)
Judge

Whether speaking/ reasoned Yes/No
Whether Reportable Yes/No