IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-5233 of 2024
Date of Decision:05.03.2024

The Assistant Commissioner State Tax
....Petitioner

Versus

M/s Prosperous Industries and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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Present: Mr. Saurabh Kapoor, Additional Advocate General, Punjab

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. The present writ petition is in relation to order dated 31.05.2022 (Annexure P-4) passed by the Deputy Commissioner of State Tax (Appeals), Patiala Division whereby it has held as under:-

> "xxxxx xxxxx xxxxx
>
> *In view of the discussions in the above paras, it is concluded that the goods were accompanied by proper and genuine documents as required under the provisions of CGST/SGST Act and Rules and there is no attempt to evade the payment of tax to the State of Punjab, consequently, the appeal is accepted and the impugned order dated 16.04.2019 passed by the Proper Officer (MW) Chandigarh-2 is set aside*".

2. Learned counsel appearing for the revenue submits that the judgment passed in CWP No.18392 of 2021 decided on 04.02.2022 in **M/s Shiv Enterprises Vs. State of Punjab and others**" relied upon hereinabove, has been set aside by the Hon'ble Apex Court in its order dated 16.01.2023 passed in Civil Appeal No.359 of 2023 titled as "The State of Punjab Vs. M/s

Shiv Enterprises and others.

3. Taking note of the contentions raised by the learned counsel for the revenue and also taking into consideration the order passed by the Deputy Commissioner State Tax (Appeals), Patiala Division, we find that before we decide, it would be apposite to quote the order passed by the Hon'ble Supreme Court in Civil Appeal No.359 of 2023 titled as "The State of Punjab Vs. M/s Shiv Enterprises and others" wherein it has been held as under:-

> "*6. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent therein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent of quashing and setting aside the notice dated 14.09.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.*
>
> *7. All the contentions/defences which may be available to the respondent-original writ petitioner are kept open to be considered by the appropriate authority in accordance with law and on its own merits.*
>
> *8. The present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs."*

4. Keeping in view of the above observation of the Hon'ble Apex Court and finding that the order passed by the Deputy Commissioner State

Tax (Appeals), Patiala Division relies on the observations under law laid down by this court in M/s Shiv Enterprises Vs. State of Punjab and others (*supra)*, which has been set aside by the Hon'ble Apex Court and the matter was remanded back, we too take similar view and direct the Deputy Commissioner State Tax (Appeals), Patiala Division to independently examine the contentions raised by the writ petitioner, before it. It would be open for the writ petitioner to raise all its contentions with regard to the challenge of invocation under Section 130 in their case. It is expected from the Deputy Commissioner State Tax (Appeals), Patiala Division to pass a detailed speaking order after examining all the aspects and hearing the concerned stake holders within a period of two months, from today.

5. Parties shall appear before the Deputy Commissioner State Tax (Appeals), Patiala Division on 15.04.2024.

6. The present writ petition stands disposed of.

7. Pending applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

March 05, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No