IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115/262

2024:PHHC:028692
CWP-17400-2023
Date of Decision:- 29.02.2024

Satguru Steels

...Petitioner

Vs.

State of Punjab and another

...Respondents

CWP-4202-2024

The Assistant Commissioner State Tax, Mobile Wing, Chandigarh-2,

...Petitioner

Vs.

M/s Satguru Steels and another

...Respondents

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

Present: Mr.Mukul Singla, Advocate
for the petitioner.
Mr.Saurabh Kapoor, Addl.AG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Both the aforesaid writ petitions have been taken up together as the issue raised by the respective petitioners is in relation to order dated 16.06.2022 passed by the Deputy Commissioner State Tax (Appeals), Patiala Division whereby it was held as under:-

> "xx xxx xx xxx xx xxx
> Thus invocation of section 130 in the present case is unwarranted and is liable to be set aside as there is no attempt to evade the payment of tax to the State of Punjab and the law laid down by the Hon'ble High Court of Punjab and Haryana in CWP No.18392 of 2021 decided on 04.02.2022 titled as M/s Shiv Enterprises Vs. State of Punjab and others is followed. The appeal of the appellant is accepted and the penalty order dated 16.06.2021 passed by Assistant Commissioner State Tax, Mobile Wing Chandigarh-2 at Shambu is set aside and directed to refund the amount of Rs.5,21,694/- to the appellant".

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. The petitioner, on the other hand, had preferred a writ petition bearing No.CWP-17400 of 2023 before this Court, wherein he prayed for refund of the amount in terms of the impugned order dated 16.06.2022 passed by the Deputy Commissioner State Tax (Appeals), Patiala Division.

4. Learned counsel for the petitioner submits that the amount as directed ought to be refunded to him subject to what is to be done in the appeal, if any, which may be preferred by the revenue against the order dated 16.06.2022. However, as noticed above, we find that GST Tribunal is yet to be formed and therefore, the revenue is before us in CWP No.4202 of 2024 (supra).

5. Taking note of the contentions raised by both the learned counsel for the parties 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.
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> 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.
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> 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."

6. 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", 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-Satguru Steels, before it. It would be open for the writ petitioners (hereinabove) 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.

7. Parties shall themselves appear before the Deputy Commissioner State Tax (Appeals), Patiala Division on **15.03.2024**.

8. Both the aforesaid writ petition stands disposed of.

9. Photocopy of this order be placed on the file of other connected case.

(SANJEEV PRAKASH SHARMA)
JUDGE

29.02.2024 **(SUDEEPTI SHARMA)**
sd **JUDGE**