**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Reserved on : 18.11.2024
Date of Decision : 04.12.2024

1. **CWP No. 27711 of 2024 (O&M)**

Sony India Private Limited …Petitioner
Versus
State of Haryana and others …Respondents

2. **CWP No. 27714 of 2024 (O&M)**

Sony India Private Limited …Petitioner
Versus
State of Haryana and others …Respondents

3. **CWP No. 27715 of 2024 (O&M)**

Sony India Private Limited …Petitioner
Versus
State of Haryana and others …Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
**HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Nikhil Naiyyar, Senior Advocate with
Mr. Rajat Khanna, Mr. Divanshu Rai,
Mr. Vijay Pratap Singh, Advocates, for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

***SANJEEV PRAKASH SHARMA, J.***

By way of these three writ petitions, the petitioner- Sony India Private Limited seeks to quash and set aside the OTS-5 rejection order issued by the Excise & Taxation Officer, DETC, Rewari, whereby the applications moved by the petitioner for one time settlement of outstanding dues under the Haryana One Time Settlement of Outstanding Dues Act, 2017 and Haryana One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 (hereinafter to be referred as the OTS Act, 2017 and OTS Scheme 2023), were rejected for the assessment years 2000-2001, 2001-2002, 2002-2003, respectively in the three writ petitions hereinabove.

2. For the purpose of adjudication CWP No. 27711 of 2024 is being taken as a lead case. The petitioner states itself to be a wholly owned subsidiary of Sony Group Corporation, Japan, engaged in manufacturing of coloured televisions and audio products at its former factory Dharuhera, Haryana facility. It has further expanded trading activities in manufacturing and sale of electronics, including video cameras, recording media, GSM phones and computer monitors. The approval from the Government of India was granted to establish a 100% subsidiary and states itself to be at the forefront of technological innovation in India. The Haryana State Government promulgated the Haryana Local Area Development Tax Ordinance, 2000 on 05.05.2000 and tax on entry of goods in the local area was imposed @ 4% of the value of the goods. The tax was to be imposed irrespective of the areas where there was earlier octroi leviable or not. The petitioner feeling aggrieved of not being able to sell its finished products within the State, preferred CWP No. 8700 of 2000 challenging vires of the Ordinance. During the pendency, the State Legislature passed the Haryana Local Area Development Tax Bill, 2000 (hereinafter to be referred as 'the HLADT'). The tax was imposed only in respect of those goods which the petitioner sent out of Haryana by way of branch transfers or by way of export sales out of India.

3. The petitioner was served with two notices dated 31.12.2001 and 07.01.2002 calling upon it to file returns for the quarters ending on 30.06.2000, 30.09.2000, 31.12.2000, 31.03.2001, 30.06.2001 and 30.09.2001. The petitioner preferred CWP No. 770 of 2002 which was disposed by this

Court vide order dated 04.03.2002 with the observation that the petitioner should make representation to the State Government seeking amendment of the notification dated 05.05.2000. Upon such a representation being made by the petitioner, wherein it claimed that components being used by it are same as used in the IT industry and, therefore, be given the benefit of notification no. 66 dated 05.05.2000, for exemption but its representation was answered with a memorandum issued on 20.05.2002 stating that the exemption is only for industries and not for any specific raw material. The petitioner preferred another CWP No. 8355 of 2002. The same was admitted by this Court. The earlier writ petition was declared as having become infructuous. This Court declined any interim relief to the petitioner and clarified as under:-

> "*After hearing the learned counsel for the parties and having gone through the record, we are of the view that the issue involved in the writ petition can be resolved only at the time of final hearing of the writ petition. While declining to grant any interim relief to the petitioner, we direct that the writ petition be set down for hearing on 19.1.2004.*
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> *We, however, make it clear that all the proceedings taken by the respondents and all deposits made by the petitioner, if any, during the pendency of the writ petition will be subject to the final orders to be passed by this Court.*"

4. The Assessing Authority has issued fresh notices for best judgment assessment on 19.08.2002 for the years 2000-2001, 2001-2002 and 2002-till 30.06.2002. However, the same were withdrawn.

5. Keeping in view the facts as above, respondent no.4 issued a notice on 03.04.2003 demanding tax for the period 2000-2001 to 2002-2003 under the HLADT Act of a sum of Rs. 21,30,76,273/-. Reply was filed by the petitioner. Thereafter, the petitioner filed CWP No. 7563 of 2003 before this Court wherein this Court directed the petitioner to move a representation to the authority. The representation was ultimately rejected on 16.07.2003. The Court granted liberty to the petitioner to amend the CWP No. 8355 of 2002. CWP No. 7563 of 2003 was disposed of as having become infructuous. In the aforesaid backdrop, the petitioner has stated that the State Government had promulgated Haryana One Time Settlement of Outstanding Dues Act, 2017 and the Scheme for recovery of outstanding dues of 2023 wherein the petitioner applied for assessment for the years 2000-2001, 2001-2002 and 2002-2003 and deposited 40% of the total settlement amount as first installment. It filed the application disputing the entire tax under the Disputed Tax Category. The petitioner was, however, served with a deficiency notice informing that as per the OTS-1 application, the amount was to be treated as admitted tax instead of disputed tax as it would have to deposit 40% of the total amount.

6. Learned counsel for the petitioner submits that since this Court in CWP No. 8355 of 2002 had stated all proceedings taken by the respondents and all deposits made by the petitioner, if any, during the pendency of the writ petition were subject to final orders to be passed by this Court, the entire amount of tax being claimed against the petitioner has to be treated as disputed and the respondents could not have rejected its application treating the tax to be paid as admitted tax.

7. Learned counsel for the petitioner in support of his arguments has relied on judgments of Hon'ble the Supreme Court in ***State of Uttar Pradesh and others vs Indian Oil Corporation Limited and others*** (2019) 17 SCC 815; ***Government of Kerala and another vs Mother Superior Adoration Convent*** (2021) 5 SCC 602; ***State of U. P. and others vs Maharaja Dharmander Prasad Singh and others vs Maharani Rajlaxmi Kumari Devi and others*** (1989) 2 SCC 505; ***Superintendent (Tech.1) Central Excise, I.D.D. Jabalpur and others vs Pratap Rai*** (1978) 3 SCC 113; Bombay High Court in ***Commissioner of Wealth Tax, Mumbai vs M/s Apar Limited, Mumbai*** 2004 (267) ITR 705; Madras High Court in ***E.I.D. Parry (India) Limited vs Assistant Commissioner (CT), Central Assessment Circle-I and others*** (2002) 126 STC 449; Division Bench judgments of this Court in ***Smt. Bhagwant Kaur vs Commissioner of Income-Tax*** (1997) 223 ITR 242; ***Jindal Strips Limited and another vs State of Haryana and others*** (2003) 129 STC 534; and ***Loyalty Solutions and Research Private Limited vs A. L. Movers Private Limited*** (2021) 87 GSTR 455, in support of his arguments.

8. We have considered the submissions.

9. The OTS Scheme defines various provisions. Clause 2(a) and 2(e) of the OTS Scheme are as under:-

> "2 (a) "admitted tax" means any amount of tax as admitted in return but not paid or short paid;
>
> xx xx xx
>
> 2 (e) "disputed tax" means any amount of tax other than admitted tax, differential tax or undisputed tax."

10. As per Clause 4.1, an applicant opting for settlement of outstanding dues under the Scheme shall have to pay by way of settlement an amount in lieu of his outstanding dues as mentioned in Schedule-1. The Schedule-1 talks of following tax which is required to be payable as per the concerned category of tax:-

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| Serial Number | Category | Percentage of Tax or any other amount payable | Percentage of interest associated with tax or any other sum payable as per column (3) | Percentage of penalty associated with tax or any other sum payable as per column (3) |
| 1. | Admitted Tax | 100% | • 0% | • 0% |
| 2. | Disputed Tax | * 30% in case of tax amount equal to or less than Rs.50 lacs<br>* 50% in all other cases | • 0% | • 0% |
| 3. | Undisputed Tax | * 40% in case of tax amount less than or equal to Rs.50 lacs<br>* 60% in all other cases | • 0% | • 0% |
| 4. | Differential Tax | 30% | • 0% | • 0% |

11. Thus, the amount is payable as above. The question, therefore, arises whether merely because the High Court had while declining interim relief, made observations that all the proceedings taken by the respondents and deposits made by the petitioner, would be subject to final order of this Court, can it be said that the entire amount was a disputed tax.

12. The petitioner, therefore, moved an application under the OTS Scheme wherein it filed two returns in Form DT-3. The returns were filed without prejudice. It is submitted by learned counsel for the petitioner that for

the assessment year 2000-2001, the petitioner had submitted two quarterly returns in two sets, terming them as Scenerio-1 and Scenerio-2 on 03.10.2003. Under Scenerio-1, the company had shown no liability of payment of tax claiming it as wholly exempted from tax under Section 11 of the Act, while in Scenerio-2, the company had reflected figures on account of purchases in local areas excluding amount on account of counter billing duty applicable on goods imported out of India and Central Excise Duty applicable on goods purchased within India. Thereafter, the deductions were claimed under Section 5 of the Act and exemption under Section 11 of the Act on account of 24 items of raw material imported in local area terming them as consumed in information and technology products. The concerned assessing authority had rejected both the returns filed by the petitioner under Scenerio-1 and Scenerio-2 and held that the entry tax is levied on Scheduled goods either manufactured or produced within State or imported outside the country in the local area. It was also held that the assessee is not entitled to claim exemption under Section 11 of the Act and as such the claim of 24 items was also rejected whereafter the petitioner became liable for payment of the tax.

13. The contention of the learned counsel for the petitioner that the same was a disputed tax was rejected by issuing order of rejection OTS-5 whereby the authority held that the petitioner had deposited OTS application under 'disputed tax' while it was liable to file OTS-1 application under 'admitted tax' category and liable to pay full amount of ₹ 9,06,32,034/- (100% tax value).

14. The contention that because the case is pending before the Court, the amount of tax required to be paid under the OTS application should

be treated as disputed as tax is wholly misconceived, as has been noticed hereinabove. The definition of 'disputed tax' means, 'any amount of tax other than admitted tax, differential tax or undisputed tax', while the 'admitted tax' means, 'any amount of tax as admitted in return but not paid or short paid'. Since the order was passed in the year 2004 holding the petitioner liable for payment ₹ 9,06,32,034/-, it would have to be treated to fall within the category of admitted tax.

15. The petitioner's claim that the amount, which it has deposited in the category of disputed tax, may be considered for considering the OTS application is wholly misconceived and cannot be sustained. The mere stating of this Court that all the payments which the petitioner has to make would be subject to final outcome 'is merely a reiterating the theory of *lis pendens'*. Since the petitioner was not granted any interim relief, the amount has to be treated to be admitted tax to be paid by the petitioner in full.

16. We may also notice that if ultimately the petitioner's writ petition is dismissed, it would be the amount which has been already assessed that the petitioner would have to deposit and in One Time Settlement also the same would, therefore, be considered. However, if the writ petition is allowed, the petitioner can always claim refund.

17. Learned counsel has stressed on the words 'without prejudice', as mentioned in its returns filed in 2003. However, they would have no bearing to the present issue involved in the present writ petitions, which is only with regard to the OTS Scheme. In our view, the decision of the authorities, in rejecting the application on the basis of the amount being less than what was required to be paid, cannot be said to be unjustified or illegal.

The petitioner would be well advised to deposit the remaining amount, if it so wants to further pursue the OTS application treating it as an 'admitted tax'.

18. With the aforesaid observations, all the writ petitions are dismissed.

19. All pending applications in all the writ petitions shall stand disposed of.

20. No costs.

**(SANJEEV PRAKASH SHARMA)**
**JUDGE**

**04.12.2024** **(SANJAY VASHISTH)**
vs **JUDGE**

Whether speaking/reasoned Yes

Whether reportable Yes