IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4930-2025 (O&M)
Date of decision: 12.03.2025

M/s Najin Exports Private Limited ....Petitioner

Versus

The State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vipul Gupta, Advocate,
for the petitioner.

(Through Hybrid Mode)

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ARUN PALLI, J. (Oral)

The petitioner (M/s Najin Exports Private Limited) prays for a Certiorari to quash the order dated 29.03.2019 (P-1), passed by the Excise & Taxation Officer-cum-Assessing Authority, Gurugram (East), creating an additional demand under the Haryana Value Added Tax Act, 2003 (HVAT Act), as also the Central Sales Tax Act, 1956 (CST Act), for the assessment year 2015-16. As also, the order dated 20.06.2024 (P-2), vide which, the appeals preferred by the petitioner against the said order have since been dismissed.

Learned counsel for the petitioner submits that the Assessing Authority, as indicated above, vide order dated 29.03.2019, had disallowed the concessional claim under the HVAT Act and CST Act. And created an additional demand of Rs.90,74,118/- under the HVAT Act, and Rs.1,17,59,202/- under the CST Act, for the assessment year 2015-16. Being aggrieved, the petitioner had preferred two separate appeals, which were dismissed by the Appellate Authority, being not maintainable, owing to non-compliance of Sub-section 5 of Section 33 of HVAT Act. The provision that requires the assessee to pay the amount of **tax admitted**, along with interest, and to furnish bank guarantee or adequate security to the satisfaction of the Assessing Authority, for the additional disputed amount, as a pre-requisite, to entertain the appeal. He concedes that the appeals were pending for over 2 ½ years, and despite repeated opportunities, the petitioner did not meet the said requirement. However, it is urged that the petitioner be granted one last opportunity to comply with Sub-section 5 of Section 33 of the HVAT Act, so that its appeals are determined on merits, else it would suffer an irreparable loss and injury.

Served with the advance copy of the petition, Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana, is present in Court. She has drawn our attention to the order dated 29.03.2019 ***(ibid),*** and submits that apparently, the petitioner had been remiss in pursuing its cause, for despite opportunities, it chose not to appear before the Assessing Authority. Resultantly, an ex-parte notice dated 25.02.2019 was also issued, clarifying that in case of non-appearance, entire benefits of concessional sales, along with input tax claim under Section 8 of the HVAT Act, would be disallowed. Further, she submits that apparently, it was owing to the non-cooperative attitude of the petitioner, for it chose not to appear even till the date of passing of the order, the authorities were left with no other option, but to frame the assessment order. She asserts that, in fact, a remedy of appeal under Section 33(2) of the HVAT Act is also available to the petitioner.

Be that as it may, she, on instructions, submits that considering the nature of dispute and to secure the ends of justice, if the petitioner is ready/willing to furnish the bank guarantee or adequate security, in terms of Sub-section 5 of Section 33 of the HVAT Act, within six weeks from today, the Appellate Authority would entertain the appeals preferred by it and decide the same, on merits.

In response, learned counsel for the petitioner undertakes on behalf of the petitioner that it shall comply with the said provisions within the time indicated above, failing which, it would not agitate the matter any further.

In the wake of the position sketched out above, and the statements made by learned counsel for the parties, we are not required to delve any further into the merits of the dispute or even formally refer to Section 33 of the HVAT Act. Accordingly, the petitioner is granted one last opportunity to comply with the provisions of Sub-section 5 of Section 33 of the HVAT Act, within the time indicated above. And, upon compliance, the Appellate Authority shall examine and decide the matter, on merits. Consequently, the order dated 20.06.2024, is kept in abeyance for a period of six weeks, to enable the petitioner to ensure compliance of the provision, referred to above. However, in the event of default, no further opportunity shall be granted, and the order passed by the Appellate Authority ***(ibid)***, shall become operational. And the petition at hand would be deemed to have been dismissed.

The petition is disposed of, in the above terms.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

12.03.2025
Ak Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No