SUPREME COURT OF INDIA

Ravi Gupta

Vs.

Commissioner Sales Tax, Delhi

C.A.No.1965 of 2009

(Dr. Arijit Pasayat J.)

27.03.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Delhi High Court dismissing the Writ Petition (C) No. 9446 of 2006 filed by the appellant.

3. The factual position is almost undisputed and needs to be noted in brief.

> "The appellant is a dealer registered under the *Delhi Sales Tax Act, 1975* (in short the `Act') and *Central Sales Tax Act, 1956* (in short the `CST Act'). Assessments were completed by the Assessing Officer for the assessment years 1999-2000, 2000-2001 and 2001-2002 under the Act and CST Act. The total demand raised was in the neighbourhood of Rs.8.3 crores. The major portion of the demand was raised on the ground that the assessee did not furnish the requisite declaration forms i.e. Form No.ST-1 under the Act and Form C and Form E-1 under the CST Act. The Assessing Officer was of the view that ample opportunity was granted to the appellant to produce the declaration forms which it failed to furnish. Therefore, the demands were raised. Before the First Appellate Authority, the appellant prayed for further time to produce the declaration forms which was declined. There was no appearance when the matter was fixed before the first Appellate Authority. Since the appellant failed to get any relief from the first Appellate Authority, it moved the Appellate Tribunal, Value Added Tax, Delhi (in short the `Tribunal') in six appeals. Alongwith the appeal an application in terms of Section 43(5) of the Act was filed to dispense with the pre-deposit which is condition precedent for entertaining the appeal.
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> At the first instance, the Tribunal after considering the rival stands, more particularly, that the declaration forms would be produced directed the payment of Rupees three crores in respect of the demands raised on the Act and the CST Act. Questioning the

correctness of the order, appellant filed a Writ Petition before the Delhi High Court which was numbered as WP (C) No.11822 of 2005. The High Court by order dated 26.9.2005 disposed of the writ petition with the following directions:

> "Considering the facts and circumstances of the case, we allow the petitioner a final opportunity of six weeks to place all such documents and the statutory forms before the appellate authority to satisfy that the petitioner is entitled to such benefit in the rate of tax. In case the petitioner is able to produce such evidence before the appellate authority, in terms of this order, it will be considered by the appellate authority and appropriate orders shall be passed by the appellate authority in terms of sub clause (5) of Section 43 of the Act by making a review of the order which is under challenge in this writ petition. The petitioner shall produce the aforesaid evidence before the appellate authority within six weeks. In case the petitioner is not able to produce such evidence, they shall be liable to make the pre-deposit in terms of this order. As and when an order under Section 43 sub-section (5) is passed by the appellate authority the petitioner shall abide by same."

As the appellant did not produce the records, the Tribunal held that the appellant was required to deposit Rupees three crores as directed earlier.

Therefore, it was held that because of such non-production and non-deposit of a sum of Rs.3 crores as directed earlier, the appeals were not entertainable. Questioning the correctness of the order, Writ Petition (C) No.9446 of 2006 was filed which was dismissed by the impugned order on the ground that the appellant had not complied with the earlier order and, therefore, the Tribunal was left with no option but to dismiss the appeals as not entertainable.

4. In support of the appeal, learned counsel for the appellant submitted that the Tribunal and the High Court failed to appreciate that large number of declaration forms from various parties were to be collected and because of situation beyond control of the appellant, the forms could not be produced and if the forms are taken into account the ultimate liability would be not more than Rupees 15 lakhs.

5. Learned counsel for the respondents supported the judgment of the High Court stating that in spite of several opportunities the appellant has failed to produce the declaration forms and no further opportunity was necessary to be granted.

6. Section 43 so far as it is relevant reads as follows:

> "......43(5)- No appeal against an order of assessment with or without penalty or against an order imposing the penalty shall be entertained by an appellate authority unless such appeal is accompanied by a satisfactory proof of the payment of tax with or without penalty or, as the case may be, of the payment of the penalty in respect of which the appeal has been preferred:

> Provided that the appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order- (a) without payment of the tax and penalty, if any, or as the case may be, of the penalty, on the appellant furnishing in the prescribed manner security for such amount as it may direct; or (b) on proof of payment of such smaller sum, with or without security for such amount of tax or penalty which remains unpaid, as it may direct:
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> Provided further that no appeal shall be entertained by the appellate authority unless it is satisfied that such amount of tax as the appellant may admit to be due from him has been paid."

7. The first proviso consists of two parts. In a given case the appeals can be entertained by the Tribunal, for reasons to be recorded in writing, without insisting on payment of tax and penalty as the case may be, of the penalty on the appellant furnishing security in the prescribed manner for such amount as it may direct. The other category which is applicable to the present case relates to direction for deposit of smaller sum with or without security for such amount of tax or penalty which remains unpaid, as it may direct. In other words, the appellate authority has a discretion not to insist on payment as a condition precedent to entertain the appeal, for which the reasons have to be recorded in writing. The order in terms of Section 43(5) is essentially an order of stay. Three things are to be considered by the Tribunal while dealing with the application for dispensing with the pre deposit. They are: the prima facie case, balance of convenience and irreparable loss.

8. Principles relating to grant of stay pending disposal of the matters before the concerned forums have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.

9. The applicable principles have been set out succinctly in *Silliguri Municipality and Ors. v. Amalendu Das and Ors.*[1], *M/s Samarias Trading Co. Pvt. Ltd. v. S. Samuel and Ors.*[2] *and Assistant Collector of Central Excise v. Dunlop India Ltd.*[3].

10. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given.

11. In the instant case the only plea which the appellant was pressing into service was that if declaration forms are produced the ultimate demand would not exceed Rs.15 lakhs. As is

rightly contended by learned counsel for the respondents, ample opportunity has been granted to the appellant to produce the declaration forms. That apparently has not been done. The appellant has produced certain records to submit that the declaration forms can be produced at the present juncture. While issuing notice on Special Leave Petition on 13.6.2006 it was directed that on payment of Rs.1,00,00,000/- realization of the balance payment shall be stayed until further orders. It is accepted that the amount has been deposited.

12. Considering the facts of the case, we direct that the Tribunal shall hear the appeal on merits without insisting on any further deposit in terms of Section 43(5). It is made clear that we have expressed no opinion on the merits of the case. It is for the appellant to satisfy the Tribunal the reason for which the declaration forms could not be produced earlier and if the Tribunal is satisfied with the genuineness of the stand it shall dispose of the appeals in accordance with law.

13. The appeal is disposed of with no order as to costs.

[1]*(AIR 1984 SC 653)*
[2]*(AIR 1985 SC 61)*
[3]*(AIR 1985 SC 330)*