

(2007) 12 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Anmol Bakers Pvt. Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Dec. 6, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Value Added Tax Act, 2005 - Section 56, 60, 62

Citation: (2008) 12 VST 109

Hon'ble Judges: Rakesh Kumar Jain, J; M.M. Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

1. In this petition filed under Article 226 of the Constitution the prayer made by the petitioner is for quashing order dated August 30, 2006 (annexure P24) passed by the Excise and Taxation Officer-cum Designated Officer (respondent No. 2) and order dated September 7, 2007 (annexure P34) passed by the Punjab Vat Tribunal (for brevity, "the Tribunal"). In the alternative a further prayer has also been made for quashing order dated November 24, 2006 (annexure P28) passed by the ETO-cum Designated Officer (respondent No. 2) dismissing the application moved by the petitioner for rectification of the order dated August 30, 2006 (annexure P24). Still further a prayer for quashing order dated September 7, 2007 (annexure P37) passed by the Tribunal has also been made. Further challenge has also been made to various other orders.

2. The petitioner was subjected to assessment and vide assessment order dated August 30, 2006 (annexure P24) passed by the ETO-cum Designated Officer, Patiala. A total demand of Rs. 6,07,60,078 has been raised. The aforementioned order was challenged before the Deputy Excise and Taxation Commissioner (Appeals) u/s 62 of

the Punjab Value Added Tax Act, 2005 (for brevity "the Act"). On the appeal an order dated February 19, 2007 (annexure P35) has been passed directing the petitioner to comply with the mandatory provisions of Section 62(5) of the Act which require that an appeal is not to be entertained unless such an appeal is accompanied by satisfactory proof of prior payment of 25 per cent of the amount of tax, penalty and interest. The petitioner was granted time to produce the treasury receipt up to March 12, 2007 failing which the appeal was to be dismissed in limine. Accordingly, the appeal was dismissed on March 13, 2007 (annexure P36) as the petitioner has failed to deposit 25 per cent of the amount. The aforementioned order was challenged before the Tribunal. The Tribunal vide its order dated September 7, 2007 dismissed the appeal and upheld the order dated March 13, 2007.

3. We have heard the learned Counsel for the parties at considerable length. At this stage it is not possible for us to record a finding whether there is any mistake in framing the assessment by the Excise and Taxation Officer-cum Designated Officer, Patiala. The Assessing Officer has framed the assessment and has computed the following items:

Wrong ITC claim availed	:	2,01,66,608
Penalty u/s 56	:	4,03,33,216
Penalty u/s 60 (for non-production of books of account)	:	5,000
Interest	:	2,45,254
	-----	-----
Total	:	507,60,078
	-----	-----

4. Accordingly no view is being expressed with regard to the correctness of the amount of wrong ITC claim availed by the petitioner. However, keeping in view the various aspects and in the interest of justice, we deem it just and appropriate to exercise discretion by directing the respondent-Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala to accept the pre-deposit amount of Rs. one crore. The aforementioned amount shall be considered sufficient compliance of the requirement of Section 62(5) of the Act.

5. In view of the above, the writ petition is disposed of with a direction to the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala (respondent No. 3) to accept the amount of rupees one crore as a pre-deposit instead of insisting upon deposit 25 per cent of the total amount assessed vide order dated August 30, 2006 (annexure P24). The petitioner shall deposit the aforementioned amount on or before January 7, 2008 and then respondent No. 3 shall decide the matter on merits

without being influenced by the observations made by any authority in any of the orders. If the amount is deposited on or before January 7, 2008 then the order dated February 19, 2007 (annexure P 36) passed by respondent No. 3 and further order dated September 7, 2007 passed by the Tribunal would stand quashed. The appeal filed by the petitioner shall then be heard on merits in accordance with law.

6. however, it is made clear that if the amount is not deposited on or before January 7, 2008 then those orders would continue to operate and the writ petition shall be deemed to be dismissed without any further reference to the Bench.