

(2014) 05 P&H CK 0679

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 8135 of 2014

Vishwas Agro Impex

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 1, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 226, 227, 245
- Punjab Value Added Tax Act, 2005 - Section 13(1A), 6(7), 6(8)

Citation: (2014) 73 VST 172

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: J.S. Bedi, Advocate for the Appellant

Judgement

Ajay Kumar Mittal, J.

In this writ petition filed under articles 226/227 of the Constitution of India, the petitioner has prayed for declaring sections 6(7) and 13(1A) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") and the notification dated October 4, 2013 (annexure P2) issued thereunder to be unconstitutional being violative of articles 14, 19, 245, 255, 286 and 301 read with 304 of the Constitution of India. Further, a writ of mandamus has been sought directing respondent No. 2 not to charge advance tax from the petitioner on the goods being brought in the State on which no tax liability occurred as the same were to be used in manufacture of tax-free goods to be sold by the petitioner. The petitioner is doing the business of manufacturing of rice under TIN No. 03952103218. The petitioner was importing paddy and rice from outside the State of Punjab and after processing and manufacturing the same, major quantity was to be disposed by way of sale. During the course of export which is covered under zero rates sales, no tax liability was attracted for conducting both type of transactions. The petitioner used to purchase paddy and rice from the open market within the State and from outside the State and while purchasing the same from outside the State, advance tax at five per cent, was attracted whereas no tax

liability occurred if the goods were disposed by way of sale or the sales were covered under the category of zero rated sales. State of Punjab made amendments in the Act and inserted sections 6(7), 6(8) and 13(1A) vide Punjab Ordinance No. 9 of 2011 dated August 12, 2011 with effect from August 12, 2011 which was later on replaced on November 2, 2011 by Punjab Act No. 26 of 2011. Although, the aforesaid provisions came into force with effect from August 12, 2011 but the State Government had not notified any goods and as such no tax was being charged but the State Government continued to collect the tax under the Punjab Tax on Entry of Goods into Local Areas Act, 2000 (hereinafter referred to as "2000 Act"). On October 4, 2013, State of Punjab issued a notification u/s 3A of the 2000 Act whereby exemption was granted to all taxable persons from the payment of entry tax from whom the tax was being charged vide notification dated September 18, 2012. Simultaneously, the State Government also issued a notification dated October 4, 2013 (annexure P2) u/s 6(7) levying tax on the import of goods which was to be treated as advance payment of VAT. As per the said notification, an exemption application was to be filed if the goods were to be disposed of in the manner otherwise than by way of sale or by making zero rate sales as provided u/s 17 of the 2000 Act, of such goods, or of the goods manufactured therefrom. The said application was to be approved with the consent of respondent No. 4 bypassing a speaking order. Accordingly, the petitioner moved an application dated February 24, 2014 (annexure P3) seeking exemption from collection of advance tax. Thereafter, the petitioner sent various reminders (annexure P4). However, no action was taken thereon. Hence, the present writ petition.

2. The learned counsel for the petitioner submitted that an application dated February 24, 2014. (annexure P3), followed by various reminders (annexure P4) was moved by the petitioner for exemption of advance tax but no decision has so far been taken thereon. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No. 4 to take a decision on the application dated February 24, 2014 (annexure P3) by passing a speaking order and after affording an opportunity of hearing to the petitioner in accordance with law within a period of one month from the date of receipt of certified copy of the order.