Reserved on 12.07.2018

Delivered on 17.07.2018

Court No. - 35

Case :- WRIT TAX No. - 614 of 2016

Petitioner :- M/S Pooran Sugar Works
Respondent :- Union Of India And 2 Othrs.
Counsel for Petitioner :- Ram M. Kaushik,Kaushalendra Nath Singh
Counsel for Respondent :- Bharat Ji Agarwal/S.S.C,Shubham Agarwal

Hon'ble Bharati Sapru,J.
Hon'ble Dinesh Kumar Singh,J.

(Per Dinesh Kumar Singh,J.)

1. This petition seeks issue of a writ, order of direction in the nature of Mandamus commanding the Income Tax Department to release amount of Rs.6,24,260/- lying in P.D. Account of Principal CIT (Central), Kanpur without deducting warehouse charges along with interest. It also seeks a direction to the Income Tax Department (hereinafter referred to as 'Department') to compensate the petitioner for the loss occurred due to alleged negligence on the part of the Department.

2. The petitioner is a firm which has been doing business of manufacture of Khandsari sugar and rab etc. A raid was conducted on the business and residential premises of the partners on 4th April, 1995 by the Department. A search and seizure operation was carried out under Section 132 of the Income Tax Act (hereinafter referred to as 'Act'). The authorities seized FDRs worth Rs. 14 Lakhs and cash amount of Rs.10,65,000/- along with sugar stock.

3. On 5th July, 1995, the petitioner wrote to the Assistant Commissioner of the Income Tax Investigation Circle, Moradabad that the goods (sugar) being perishable items should be released against the maximum guarantee of the tax at the highest rate leviable on the value of the stock. However, it seems that the authorities did

not act upon on the said representation.

4. The petitioner thereafter approached this Court by filing Civil Misc. Writ Petition No.761 of 1995. This Court directed the authority concerned to pass appropriate order (s) for releasing the goods of the petitioner seized during search and seizure operation conducted on 4th April, 1995.

5. In pursuance of the aforesaid order passed by this Court, the authority passed the order, requiring the petitioner to furnish a bank guarantee of Rs.63,85,000/- in favour of the Department to get release of stock of the sugar. The petitioner instead of complying the aforesaid order of the authority, approached this Court again by filing Civil Misc. Writ Petition No.900 of 1995, impugning the order passed for furnishing a bank guarantee of Rs.63,85,000/- to get release of stock of the sugar. The Assistant Commissioner of the Department had passed an order under Section 132 (5) of the Act, assessing the total tax liability, including the interest etc, on the petitioner of Rs.1,64,84,223/-. This amount exceeded the amount of assets seized and ordered to be retained. This Court after considering the submissions of counsels for the parties and the facts of the case, passed its final judgment and order dated 11th October, 1995 in Civil Misc. Writ Petition No.900 of 1995 and held that the tax liability assessed against the petitioner was found to the tune of Rs.1,64,84,223/- which was much more than the value of the goods so seized and, therefore, this Court did not find any illegality in the order, requiring the petitioner to furnish a bank guarantee of Rs.63,85,000/- in favour of the Department to get release of stock of the sugar. However, it was said that this order would be subject to the final order passed under Section Section 132 (12) of the Act.

6. Despite dismissal of aforesaid writ petition by holding that there was no illegality in requiring the petitioner to furnish a bank guarantee of Rs.63,85,000/-, the petitioner furnished bank guarantee only for an

amount of Rs.40,20,833/-. The Department released stock of sugar except for 1200 bags of sugar. The petitioner again approached this Court by filing Civil Misc. Writ Petition No.123 of 2000. This Court noted that 5724 bags of sugar was seized in search and seizure operation carried out under Section 132 of the Act on the business and residential premises of the partners on 4th April, 1995 and against the order of furnishing a bank guarantee of Rs.63,85,000/- to get release the entire stock of sugar, the petitioner furnished bank guarantee of around Rs.40,25,000/-. This Court directed that 1200 bags of sugar should be auctioned forthwith by the Department in accordance with the law and sale proceeds to be adjusted against the tax liability of the petitioner. 1200 bags of sugar was finally auctioned on 9th January, 2002 at the rate of Rs.778.33 per quintal and the total sum received from the auction was Rs.9,34,000/-. Since the petitioner did not furnish the bank guarantee of Rs.63,85,000/-, as directed by the authority to get release of entire stock of the sugar, it had to be kept in the Central Warehouse for which the Department had to pay Rs.3,09,740/- towards charges to the Central Warehouse Corporation for the period upto 4th February, 2002 from the date of deposit of 1200 bags of sugar.

7. The petitioner approached the Income Tax Settlement Commission under Section 245 of the Act to get its dispute with the Department settled regarding its liabilities. The Settlement Commission passed the final order on 27th March, 2012. The Settlement Commission had upheld the interest under Section 234A and 234C of the Act. However, it waived of interest under Section 234B amounting to Rs.43,53,651/-. After the tax liabilities were finalized by the Settlement Commission, notice of demand dated 23rd November, 2012 was issued. The petitioner challenged the aforesaid notice of demand by filing Writ Petition No. 303 of 2013 before this Court on various grounds namely (i) the notice of demand was issued

after a delay of 7 months from the date of passing of order under Section 245D(4), (ii) the notice of demand did not specify the period for which the interest u/s 234A, 234B and 234C was charged and (iii) rectification application filed for rectifying the notice of demand was not being disposed of by the Department. This Court vide its order dated 6th August, 2014 dismissed the writ petition on the ground that there is no justification to interfere in the notice of demand that was issued pursuant to the order of the Settlement Commission. Against this order passed by the Court, the petitioner filed SLP (Civil) No. 29070/2014 before the Supreme Court. The Supreme Court vide its order dated 10th November, 2014 dismissed the SLP while permitting the petitioner to approach the Income Tax Settlement Commission for appropriate remedy.

8. A miscellaneous application was filed on 23rd January, 2015 by the petitioner and 3 others for rectification. The Settlement Commission vide its order dated 25th February, 2015 disposed of the application, modifying paragraph 121 of the order dated 27th March, 2012, which reads as under:-

> "5..........
>
> *'Phrase of the para 121 after modifications.*
>
> *".... The applicants have requested for waiver of interest u/s 234A, 234B and 234C, which is not accepted, however, the credit of cash seized should be given by the AO with effect from date of seizure while calculating interest under this section. The credit of the money realized on account of auction of seized sugar and monies realized on account of encashment of FDR should be given by the AO with effect from the date the monies were realized.*
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> *6. The assessing officer is directed to charge the interest u/s 234A and 234C as per the record."*

The Settlement Commission specifically rejected the claim of the petitioner with reference to the loss occurred due to seizure of sugar as it held that it was not under the powers and functions of the Income Tax Settlement Commission to pass any such order.

9. We have heard Mr. Kaushalendra Nath Singh, learned counsel appearing for the petitioner, and Mr. Shubham Agarwal, learned counsel appearing for respondents.

10. It is well settled that the Department is entitled to secure the tax liability by keeping the goods seized. The petitioner was directed to furnish a bank guarantee of Rs.63,85,000/-, but instead of complying the aforesaid direction, the petitioner furnished bank guarantee of only Rs.40,20,833/- and, therefore, the Department kept 1200 bags of sugar which was ultimately auctioned pursuant to the order dated 17th October, 2002 passed by this Court in Civil Misc. Writ Petition No. 123 of 2000. Had the petitioner furnished the bank guarantee, as directed by the Department for an amount of Rs.63,85,000/-, the Department would have released entire stock of sugar and the Department was not required to keep 1200 bags of sugar in the warehouse for which it had to pay Rs. 3,09,780 as warehouse charges. Therefore, it was not the Department which was at fault, rather it was the petitioner itself for which the Department cannot be penalized and, therefore, the claim of the petitioner for refund of Rs.3,09,740/- towards warehouse charges paid to the Central Warehouse Corporation by the Department for keeping 1200 bags of sugar is rejected.

11. In respect of second prayer for granting interest from the date of seizure to the date of its actual payment, it is clear that the tax liability was much more than the goods and cash which was seized, including FDRs. However, the Settlement Commission waived of the interest amount to the tune of Rs.43,53,651/-. The petitioner kept the issue alive till the final order was passed by the Settlement Commission on 25th February, 2015. Therefore, the petitioner cannot claim interest on the amount of Rs. 6,24,260/- from the date when the goods were

auctioned. We are of the view the petitioner is entitled for the interest at the rate of 12% per annum from the date of final order passed by the Settlement Commission i.e. 25th February, 2015. Thus, we direct the respondent-authority to release Rs.6,24,260/- lying with the CIT (Moradabad) with interest at the rate of 12% per annum from 24th February, 2015 till the date actual payment is made. We further direct that the needful should be done within a period of four weeks from the date of production of certified copy of this order.

12. With the aforesaid observations/directions, the writ petition is **partly allowed.**

Order Date :- 17th July, 2018
MVS Chauhan/-