IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-19296-2024
Decided on : 09.08.2024

M/s GEA Westfalia Separator India Pvt. Ltd.

. . . Petitioner(s)

Versus

State of Haryana and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Shubhangi Gupta, Advocate,
Ms. Priyanka Rathi, Advocate and
Mr. Ashwini Chandrasekaran, Advocate
for the petitioner(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. Petitioner has assailed the order dated 05.04.2024, whereby, refund application of the petitioner was rejected.

2. Learned counsel for the petitioner submits that only one line order has been passed without any application of mind and without considering the reply filed by the petitioner. No reasons have been given for holding the reply to be unsatisfactory, and therefore, it is a case of non-application of mind.

3. Learned counsel for the petitioner also further submits that a similar writ petition i.e. ***CWP-16293-2024***, titled as, *"**M/s Star Foods and Beverages** vs. **State of Punjab and others**"*, this Court has issued notice of motion and the said case also, there has been a complete non-application of mind while passing the impugned order, as the order does not give reasons.

4. Learned counsel also relies upon the judgment passed by the

Delhi High Court in *"Balaji Medical and Diagnostic Research Centre vs. Union of India, (2024) 16 Centax 154 (Del.)"*, wherein, the Delhi High Court had remanded the matter back to the concerned authority to examine the case afresh with consideration of the reply.

5. We have considered the submissions and find from the perusal of the documents that the situation is otherwise, while the respondents have rejected the refund claim application, reasons for rejecting the refund and amount, have been given in the detailed order attached with it. In the detailed order of rejection, after considering the nature of business of the petitioner, the authority has noticed that there were certain deficiencies, as observed in the refund application, which were pointed out to the petitioner. Thereafter, petitioner has failed to meet-out the said deficiencies.

The reply filed by the petitioner was also found to be not satisfactory, and for which, point-wise reasons were given, same are as under:-

(a) *The reply on observation, short tax liability discharged in GSTR 3B as compared to GSTR-1 amounting to Rs.11369/- for the period 2017-18 not found satisfactory.*

(b) *The reply on observation, Excess ITC claimed in GSTR 3B as compared to GSTR 2A amounting to Rs.8674767/- for the period 2017-18 not found satisfactory.*

(c) *There is demand pending against the taxpayer amounting to Rs.112709/- out of Rs.505818/- for the period 2017-18 against section 73 of the CGST/HGST Act 2017.*

(d) *The taxpayer has submitted a post-dated service agreement however the supplies made prior to date of service agreement.*

(e) *The taxpayer has invoiced its foreign entity, services like Commission Sales which is not mentioned/ explained in*

service agreement.

6. Thereafter, concerned authority has also noticed that compliance of CGST/HGST Act 2017 is imperative to ensure the legitimacy and eligibility of refund claims. It is further also observed and requested the petitioner to review the reasons provided for the rejection carefully and take appropriate steps to address any deficiencies or discrepancies identified. Option has also been granted to file appeal against the decision, if they were not satisfied.

The petitioner, however, chose not to address to those discrepancies/deficiencies, especially, with regard to the demands relating to the earlier years, which were pending, as noticed above.

7. Be that as it may, we also noticed that there is a specific provision for filing of appeal against the said order. Petitioner has, however, chosen not to file an appeal and has directly approached this Court.

It is well settled that under Article 226/227 of the Constitution of India, we do not act as an Appellate Authority and factual aspects are not required to be examined by us. It is only in rarest of rare cases, when this Court would directly entertain a writ petition, more so, in cases, where there is a blanket violation of provision of law.

8. Moreover, under Article 226 of the Constitution of India, exercising the jurisdiction like an appellate Court, is neither warranted nor appreciated by the Hon'ble Apex Court. Thus, as per the dictum of the Hon'ble Apex Court, rendered in ***Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222***, this Court does not find any substantial reason to deviate from the view point taken by the

learned Tribunal.

9. The Hon'ble the Apex Court has unequivocally established that the jurisdiction of the High Courts under Article 226, while issuing the writ of *Certiorari*, is limited. It is primarily aimed at rectifying the errors of jurisdiction or instances of violation of the principles of natural justice. Therefore, it constitutes a supervisory role, and High Courts ought to abstain from assuming the function of an appellate court while dealing with the issue of writ of *Certiorari*. High Courts should refrain from re-examining the evidence, particularly with regards to its sufficiency or adequacy. While exercising its power under Article 226 of the Constitution, High Court must cause interference only when there is error of law, which requires correction and not in general, when there is error of fact. In ***Syed Yakoob's case (supra)***, Hon'ble Apex Court observed in Paragraph No. 7 as under:-

> *"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an*

appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104: Nagendra Nath v. Comm. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168."

Even, the said view has been reiterated by the Hon'ble Supreme Court recently in ***Central Council for Research in Ayurvedic Sciences and Anr. v. Bikartan Das and Others; 2023 AIR (Supreme Court) 4011***.

10. Therefore, we restrain ourselves from entertaining present writ petition and living it open for the Appellate Authority alone to examine the factual aspects. The canvas at the level of Appellate Authority, is much larger than the scope at the writ petition. The petitioner ought to have failed to avail the remedy of appeal, should have been now, we allow the petitioner to go in appeal, if so advised.

Writ petition stands **dismissed** accordingly. It is, however, observed that if the appeal is preferred within a period of 15 days henceforth, the Appellate Authority will decide the appeal on merits without there being the issue of limitation.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

August 09, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No