

IN THE HIGH COURT OF HIMACHAL PRADESH

SHIMLA

CWP No. 5462 of 2020

Decided on : 7.12.2020

M/s GM Powertech and others ...Petitioners.

Versus

State of H.P & others

Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioners: Mr. Bharat Bhushan, Advocate (through Video conferencing).

For the respondents: Mr. Ajay Vaidya, Sr. Additional Advocate General for respondent No.1.

Mr. Lokender Pal Thakur, Sr. Penal Counsel, for respondent No.2.

Sureshwar Thakur, J (oral)

The order(s) of assessment made by the assessing authority, and, appertaining to GST levies, stand respectively embodied in Annexure(s) P-6 and P-7. However, the afore orders of assessment of GST, are, assailed through the instant petition.

2. After hearing the learned counsel for the contesting litigants, it visibly appears that the recouring by the writ petitioner, of, the extant remedy, is a gross mis-recouring, as, Section 107 of the

¹ Whether reporters of the local papers may be allowed to see the judgment?

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Himachal Pradesh Goods and Service Tax Act, 2017, purveys an alternative remedy to the writ petitioner, to, make an appeal thereunder, against, the afore orders of assessment.

3. The learned counsel for the writ petitioner, has not been able, to, convince this Court that the afore remedy is either not a befitting remedy, nor, is an efficacious remedy, as, he has not been able to make an argument, hence, falling within the exception, to, the jurisprudential principle, embodying the canon qua upon availability of an alternative statutory remedy, vis-a-vis, the filing of the extant petition, the extant petition, is, still maintainable (a) exception whereof, is, comprised in palpable breaches being made by the assessing authority, vis-a-vis, the statutory provisions appertaining to the levy of GST, upon the petitioner firm, (b) whereupon alone the availability, of, the afore statutory remedy becomes both inefficacious, as well as, is not a befitting remedy. Consequently, the instant petition is not maintainable before this Court.

4. However, the learned counsel for the writ petitioner, has drawn the attention of this Court, to the mandate borne in sub Section 6, of Section 107 of the Act supra, wherein an imperative mandate, is cast upon the aggrieved writ petitioner, to, for ensuring its filing a validly

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constituted appeal against the afore orders of assessment, hence deposit 10% of the disputed sums of tax, and, also its being enjoined to deposit the entire quantum of admitted liability tax. His focus is centered, upon the factum, of the petitioner being enjoined to deposit 10%, of, the disputed sums of tax, and, the afore necessity of deposit of the afore per centum of tax determined, under the afore assessment orders, stand contended by him, to, render the afore alternative remedy to be inefficacious, as, the bank accounts of the writ petitioner firm rather stand frozen. He further submits that thereupon, he would be de-facilitated to maintain a duly constituted appeal, before the statutory authority concerned. For undoing the afore obstacle, the learned Sr. Additional Advocate General, states on instructions meted to him, that the respondents concerned, do not hold any objection, if the bank concerned, is directed to, release into the account of the respondent concerned, 10% of the disputed sums, in satisfaction of the afore imperative statutory condition.

5. Given the afore made submission, at the Bar by the learned Sr. Additional Advocate General, this Court disposes of the instant writ petition, with a direction to the writ petitioner, to, avail the statutory remedy of its appealing against the orders of assessment. Further more,

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it is also directed that the bank concerned shall forthwith release into the accounts of the statutory authority concerned, 10% of the disputed sums of tax. Further more, it is also directed that the writ petitioner shall deposit the entire quantum of admitted liabilities towards tax, before the statutory authority concerned, in contemporaneity, of, its maintaining the statutory appeal.

6. Be that as it may, it is open for the writ petitioner, to, agitate before the statutory authority concerned, the validity of the order, if any, made orally or in writing, to the Bank concerned, and, wherethrough the bank(s) account of the writ petitioner stand(s) frozen, for therethroughs hence ensuring realizations of sums of tax determined against it, under the afore Annexures.

7. Lastly, it is directed that upon the writ petitioner, making an appeal against the impugned assessment of tax, within two weeks from today, the statutory authority concerned, shall, decide the afore appeal, in accordance with law, within four weeks thereafter. All pending applications stand disposed of accordingly.

(Sureshwar Thakur),
Judge.

7th December, 2020
(Priti)

(Chander Bhusan Barowalia),
Judge.