



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7273 of 2022

Date of Decision : 10th January, 2023

M/s Skylight Man Power and Hospitality Services

..... **Petitioner**

Versus

The Commissioner, State Taxes and Excise and others

..... **Respondents**

Coram:

The Hon'ble Ms. Justice Sabina, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹

For the Petitioner : Mr. Vishal Mohan, Senior Advocate with Mr. Aditya Sood and Mr. Praveen Sharma, Advocates.

For the Respondents : Ms. Seema Sharma, Deputy Advocate General.

Sabina, Judge (oral)

Petitioner has filed the petition under Article 226 of the Constitution of India, seeking mainly following relief:-

“a). *A writ in the nature of certiorari may kindly be issued quashing the attachment order in respect of attachment of debtors and immovable property of the petitioner.*”

2. Mr. Vishal Mohan, learned Senior Counsel for the petitioner has submitted that the petitioner has filed statutory appeals with regard to assessment years, 2019-20, 2020-21 and 2021-22.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Petitioner has made the deposit as per Section 107(6) of the Himachal Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act'). As per Section 107(7) of the Act, the recovery proceedings for the balance amount shall be deemed to be stayed. However, despite specific provision, as envisaged under Section 107(7) of the Act, the attached property and the debtors have not been released which were provisionally attached by invoking provisions of Sections 79 and 83 of the Act.

3. Ms. Seema Sharma, learned Deputy Advocate General, on the other hand, has opposed the petition and has submitted that vide order (Annexure P-6) dated 17.7.2022, the bank accounts of the petitioner have already been de-frozen and with a view to secure the remaining taxes, the property of the petitioner was liable to remain under attachment.

4. In the present case, the controversy involved is, as to whether the provisional attachment order of the property of the petitioner passed under Sections 79 and 83 of the Act, was liable to continue after filing of the statutory appeals in terms of Section 107 of the Act. Thus, the relevant provisions which require consideration in the present case are Section 107(6) and Section 107(7) of the Act.

5. Section 107(6) and Section 107(7) of the Act read as under:-

“(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.”

6. Admittedly, petitioner has filed statutory appeal before the competent authority by depositing the pre-deposit amount as per Section 107(6) of the Act for the assessment years, 2019-20 & 2020-21. The fact is evident from order Annexure P-6 dated 17.7.2022, passed by the appellate authority. The order (Annexure P-6) reads as under:-

“Reference to the subject cited above, it is intimated that during the course of hearing of the above mentioned appeal cases on 15.06.2022, the representative of the Appellant requested for the de-freezing of bank accounts of the appellant under Section 83 (2) of the HP GST Act, 2017, so

that the appellant can carry on his day to day business. The appellant has already deposited the pre-deposit amount in these cases. Hence, Interim relief in this regard is hereby granted. Therefore, you are directed to de-freeze the bank account of the appellant till the disposal of the case.”

7. During the course of arguments, learned Senior Counsel for the petitioner has submitted that during the pendency of the writ, statutory appeal has also been preferred with regard to assessment year, 2021-22 and at the time of filing of the appeal, requisite amount has already been deposited in terms of Section 107(6) of the Act. Learned Senior Counsel has further submitted that so far as assessment year, 2017-18 is concerned, the petitioner has not preferred any appeal and has deposited the entire amount as per the demand raised by the Department. So far as assessment year, 2018-19 is concerned, there is deficiency of around Rs.2,00,000/- with regard to the demand raised by the Department and petitioner has not preferred any appeal against the said assessment year. Petitioner undertakes to deposit the balance amount within ten days from today.

8. The Chart showing assessment year, demand raised by the Department and the amount deposited/recovered, mentioned in Paragraph 3(c) to (e) of the rejoinder reads as under:-

| Assessment Year | Demand raised | Demand deposited/recovered |
|-----------------|---------------|----------------------------|
| 2017-18 | Rs.322824/- | Rs.322824/- |
| 2018-19 | Rs.2662564 | Rs.24,21000/- |
| 2019-20 | Rs.10370856/- | Rs.44,12,000/- |
| 2020-21 | Rs.12731732/- | 4818801 |
| 2021-22 | Rs.4721772/- | Rs.1600000/- |
| Total | Rs.30811478/- | Rs.13574625/- |

9. Thus, as per above Chart given by the petitioner in its rejoinder, so far as the assessment year, 2017-18 is concerned, the entire amount demanded by the respondent-Department has already been deposited/recovered. However, there is some deficiency with regard to the assessment year, 2018-19. So far as the assessment years, 2019-20, 2020-21 and 2021-22 are concerned, petitioner has preferred appeals under Section 107 of the Act and it is the case of the petitioner that the requisite amount as per Section 107(6) of the Act has already been deposited with the Department. The said submission made by learned Senior Advocate for the petitioner so far as the appeal preferred by the

petitioner with regard to the assessment years, 2019-20 and 2020-21 is concerned, is duly corroborated by the order passed by the appellate authority (Annexure P-6).

10. So far as the legal proposition in issue is concerned, it is evident from a combined reading of Sections 107(6) and 107(7) of the Act that at the time of filing of the appeal, a sum equal to 10% of the remaining amount on taxes in dispute, in relation to which the appeal has been preferred, is required to be deposited and when the amount as envisaged under Section 107(6) of the Act is deposited, recovery proceedings for the balance amount shall remain stayed.

11. In the present case, it is the case of the petitioner that for three assessment years, *i.e.*, 2019-20, 2020-21 and 2021-22, petitioner has preferred appeals and has deposited the requisite amount as per Section 107(6) of the Act. Under these circumstances, the recovery proceedings qua the balance amount are deemed to be stayed. Hence, the appellate authority by passing order (Annexure P-6) by only directing to de-freeze the bank account of the petitioner is against the provisions of Section 107(7) of the Act. In fact, the attachment order of the debtors as

well as immovable property of the petitioner was also liable to be re-called.

12. Accordingly, this petition is disposed of with a direction that in case the petitioner clears the entire amount due so far as the assessment years, 2017-18 and 2018-19 are concerned, within ten days from today and in case the petitioner has also made the pre-deposit under Section 107(6) of the Act, *vis-à-vis*, assessment year, 2021-22, then the attachment order of the immovable property of the petitioner as well as attachment of the debtors shall be revoked forthwith by the respondents.

Pending miscellaneous application(s), if any, shall also stand disposed of.

**(Sabina)
Judge**

**(Sushil Kukreja)
Judge**

January 10, 2023 (ks)