

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.2002/2022

Liberty Shoes Limited Branch Janipur Jammu Petitioner(s)/Appellant(s)

Through :- Mr. Sachin Sharma, Advocate.

V/s

UT of J&K and others

....Respondent(s)

Through :- Mr. K. D. S. Kotwal, Dy. AG.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

ORDER

04.08.2023

ORAL:-

Tashi Rabstan,J:-

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed the relief in the nature of mandamus for commanding the respondents to refund unadjusted amount of ₹2084724/- (Twenty Lakh Eighty Four Thousand Seven Hundred and Twenty Four only), under Section 50 of the Value Added Tax Act, 2005 for the periods 2006-07 (3rd and 4th Qtr) and 2008-09 in pursuance to the Order dated 04.09.2014 passed by the State Sales Tax Appellate Tribunal, J&K, Jammu. Further relief is prayed by the petitioner in the nature of writ of mandamus for commanding the respondents to pay the interest @24% on the Principal amount of refund of ₹2084724/- due to the petitioner u/s 51 of the J and K Value Added Tax Act, 2005 in favour of the petitioner.

2. The case as projected by the petitioner is that the petitioner is an incorporated company duly registered under the Companies Act, 1956, which

deals in the manufacture and sale of footwear and its accessories all over the country including the UT of Jammu and Kashmir. It is averred in the writ petition that the petitioner had registered itself under the erstwhile Jammu and Kashmir Value Added Tax Act, 2005 (hereinafter referred as VAT Act, 2005) and Central Sales Tax, 1956 (herein referred as CST Act, 1956) vide TIN 01751050426 issued by the respondent no.3 for the purpose of sales and purchase of leather and plastic footwear, its accessories, leather goods etc. With the implementation of Goods and Service Tax Act, 2017, the petitioner has smoothly transitioned to the new regime and has been a regular filer of all the compliances as envisaged under the Goods and Service Tax Act, 2017.

3. It is averred in the writ petition that the controversy pertains to the limited question of refund of excess payment of tax and interest of ₹2084724/- deposited, under protest for the period 2006-07 (3rd and 4th Qtr), and for the period 2008-09 by the petitioner in pursuance of assessment order dated 17.08.2009 and assessment order dated 26.03.2012, passed by the Respondent no.3. It is also averred in the writ petition that the said demand was set aside by the State Sales Tax Appellate Tribunal vide order dated 04.09.2014. Thus, the payment of demand made under protest is liable to be refunded along with interest in favour of the petitioner, which the respondents have failed to pay in spite of continuous reminders.

4. Objections on behalf of respondent no.3 stands filed.

5. Heard learned counsel for the parties and perused the record.

6. A perusal of the objections filed by respondent no.3 would show that the respondents in terms of order No.02-Accts of 2023 dated 18.01.2023 (Annexue-I attached with the objections of the respondent no.3) has granted

sanction/approval for refund of the amount of ₹20,84,724/- in favour of the petitioner and the same stands credited into the account of the petitioner on 27.01.2023. The relevant portion of said order is reproduced as:

“Now, therefore, in exercise of the powers delegated by the Commissioner, State Taxes, J&K under Section 5 of the J&K Value Added Tax, 2005 read with Rule 55(3) of the J&K VAT Rules, 2005 and Section 174 of the J&K Goods and Service Tax, Sanction/approval is hereby accorded to the refund amounting to Rs. 2084724/- (Twenty lac Eighty-four thousand seven hundred and twenty-four only) in favour of M/s Liberty Shoes Ltd. Gandhi Nagar, Jammu bearing TIN-01751050426 for the a/c year 2006-2007 & 2008. Subject to the condition that the Assessing Authority shall ensure that there is no tax liability outstanding against the dealer on the date of issuance of refund voucher.”

7. So far as the first relief prayed for by the petitioner with regard to refund of ₹2084724/- in favour of the petitioner is concerned, the same relief has now become infructuous, in view of the amount claimed by the petitioner already stand refunded/credited into the account of the petitioner, as per the objections filed by the respondent no.3.

8. The second relief claimed by the petitioner falls within the ambit of Section 51(1) of The Jammu and Kashmir Value Added Tax Act, 2006. For the facility of reference, Section 51(1) is reproduced as below:

51. Interest. – (1) A registered dealer entitled to refund in pursuance of any order under the Act (including assessment under Section 37, Section 38, Section 39 or Section 40) or in pursuance of any order by any Court shall be entitled to receive in addition to the refund, simple interest at the rate of 24% per annum for the period commencing within sixty days of the application claiming refund in pursuance to such order till the date on which the refund is made.”

9. Perusal of Section 51(1) of the J&K Value Added Tax, 2006 would show that the registered dealer entitled to refund in pursuance of any order under the Act in addition to the refund is also entitled to the simple interest at the rate

of 24% per annum for the period commencing within sixty days of the application claiming refund in pursuance to such order till the date on which refund is made.

10. Confronted with the aforesaid position of law, Mr. KDS Kotwal, learned Dy. AG submitted that though as per the Objections and its annexures, the refund claimed by the petitioner has duly been credited into the account of the petitioner. However, the interest part has not been released in favour of the petitioner till now.

11. In view of what we have observed aforesaid, we deem it appropriate to dispose of this writ petition by directing the respondents to pay the simple interest at the rate of 24% in favour of the petitioner in terms of Section 51(1) of the J&K Value Added Tax Act, 2005.

12. Let the aforesaid exercise be initiated and concluded within a period of four weeks from the date copy of the complete paper book along with this order be supplied to the respondents.

13. Disposed of as above.

(Mohan Lal)
Judge

(Tashi Rabstan)
Judge

Jammu:
04.08.2023
Raj Kumar

Whether the order is speaking? : Yes/No.

Whether the order is reportable? : Yes/No.