IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17033 of 2015

Date of Decision: 18.9.2015

M/s Rishabh Telelinks, Jaipur

....Petitioner.

Versus

State of Haryana and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Rajiv Agnihotri, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to refund the amount deducted by respondent No.5 and deposited with the Sales Tax Department.

2. The petitioner is engaged in the execution of works contract in the State of Rajasthan as well from the State of Rajasthan to the State of Haryana in the course of inter-State trade and commerce. It is a Public Limited Company and entered into a service agreement with respondent No.5-M/s Bharti Airtel Ltd. on 1.4.2009. Respondent No.5 deposited Tax Deducted at Source (TDS) deducted on payment made to the petitioner and issued TDS certificates on labour contract wherein there is no transfer of property in goods. Respondent No.5 is engaged in the business of providing telecommunication services and setting up infrastructure and in furtherance of its business activities was in the

requirement of execution of certain works. On representation of the petitioner, respondent No.5 had agreed to appoint it on a non-exclusive principal to principal basis for the execution of the works contract. The petitioner is registered under the Rajasthan Value Added Tax Act, 2006 and also under the Central Sales Tax Act, 1956 having TIN No. 8322556375 and is filing statutory returns and discharging tax obligations. The petitioner is also registered with the Service Tax Department and is filing quarterly returns and discharging tax obligations. There was no service tax liability in the present contract. During the year 2011-12, the petitioner entered into and executed service contract with respondent No.5 at Ambala in the course of inter-State Trade and Commerce. There was no supply of any goods from Rajasthan. As per said contract, the whole of the supply of the material, if any, was made free of cost by respondent No.5 to the petitioner as per certificates, Annexure P-1 (Colly). It is a transaction in the course of inter State Trade and Commerce, there is no transfer of property in goods from the contractor to the contractee, hence no sale of goods. As such, there is no provision for deduction of tax at source. Unfortunately, respondent No.5 deducted TDS on such transactions which were in the course of inter State Trade and Commerce and issued certificates regarding TDS. The petitioner approached the Sales Tax Department and filed written submissions dated 6.6.2013 (Annexure P-2). Respondent No.4 vide letter dated 3.3.2014 (Annexure P-3) informed the petitioner that inspite of several notices issued to respondent No.5, there is no response and, therefore, the application, Annexure P-2, is filed. The petitioner filed its submissions dated 10.6.2014 (Annexure P-4) with respondent No.5 but there was no response. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner filed reply dated 10.6.2014 (Annexure P-4) to the letter dated 3.3.2014 (Annexure P-3), but to no effect. He, however, submitted that liberty be granted to the petitioner to file a detailed and comprehensive reply before the appropriate authority by incorporating the grievance as raised in the present writ petition, however, direction be issued to the authority concerned to decide the reply expeditiously in a time bound manner in accordance with law.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition with liberty to the petitioner to file a detailed and comprehensive reply raising all the pleas as raised in the present writ petition within a period of two weeks from the date of receipt of certified copy of this order before respondent No.3 who shall decide the same in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of four weeks from the date of receipt of the reply. The petitioner shall be entitled to lead any evidence to substantiate its claim before the concerned authority. It is further directed that in case it is found that the petitioner is entitled to the amount of refund, the same be paid to the petitioner in accordance with law within next two weeks.

(AJAY KUMAR MITTAL)
JUDGE

September 18, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**