IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17635 of 2015

Date of Decision: 25.8.2015

M/s Bhushan Chhura & Co., Sultanpur Lodhi, Kapurthala
....Petitioner.

Versus

State of Punjab and others
...Respondents.

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

PRESENT: Mr. Tribhawan Singla, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ 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 not to enforce the recovery of any tax under the Punjab Value Added Tax Act, 2005 (in short “the Act”) as amended in 2013 and to issue the certificate of exemption/reduced payment of advance tax to the petitioner as per Section 6(7A) of the Act added vide notification dated 15.11.2014.

2. The petitioner is engaged in the business of various types of contracts in and outside State of Punjab and is duly registered with the Excise and Taxation Department vide TIN No. 03881107406. As per Section 27 of the Act, for the payments made to the contractor by the contractee, a notified sum is required to be deducted at source which is deposited in the treasury by the contractee and the contractor is entitled to take credit of the said amount. The petitioner being a contractor, the

said sum is being deducted on the total value of payments received/ credited irrespective of the value of the goods involved therein. The petitioner is filing the returns periodically and was not liable to pay any tax in the treasury as its tax which was deducted at source along with input tax credit is more than the output tax liability. The Form VAT-28 (Annexure P-1), certificate of deduction of tax from payment made to the contractors issued by the Executive Engineer, Punjab Mandi Board, Jalandhar shows the debt of ₹ 90,25,769/- deducted for the year 2014-15. After the deduction of tax at source by the contractee and on account of the tax paid on the purchase of goods, the petitioner is not left with any liability to discharge at the time of filing the return and as such is entitled to refund of money which is being carried forward on a routine basis as the refunds are not given by the State of Punjab. Government of Punjab had amended the Act and issued a notification dated 4.10.2013 (Annexure P-2) for granting exemption to all taxable persons from payment of entry tax which was being charged as per the earlier notification dated 18.9.2011/12. Another notification dated 4.10.2013 (Annexure P-3) was issued notifying 30 goods for imposition of tax under Section 6(7) of the Act and in view thereof, the petitioner is being charged advance tax. The petitioner applied for exemption vide letter dated 24.3.2015 (Annexure P-4) pleading that its gross turn over from 1.4.2014 to 31.12.2014 was ₹ 26,70,47,313/- and total amount of VAT deducted at source was ₹ 2,01,58,059/- and respondent No.3 vide letter dated 8.4.2015 (Annexure P-4) granted the exemption to the petitioner for paying the advance tax upto 30.6.2015. Thereafter, the petitioner vide letter dated 24.6.2015 (Annexure P-6) again applied to respondent No.3 for renewal of the exemption for depositing the advance tax as it is existing dealer in 5.5% VAT category and is already paying 6% TDS and 5.5% entry tax on the Bitumen and also liable to pay tax on interstate purchasing. However, no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a letter dated 24.6.2015 (Annexure P-6) to respondent No.3, but no action has so far been taken thereon.

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 by directing respondent No.3 to take a decision on the letter dated 24.6.2015 (Annexure P-6), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

August 25, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**