IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18247 of 2015

Date of Decision: 31.8.2015

M/s Jolly Overseas Pvt. Ltd., Jalandhar

....Petitioner.

Versus

State of Punjab and another

...Respondents.

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

PRESENT: Mr. Avneesh Jhingan, 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 charge advance tax from the petitioner on the goods being brought in the State and to be used in manufacture of goods for export.

2. The petitioner is engaged in the business of manufacturing of pipe fittings and tubewell fittings. The goods manufactured are mainly exported out of India, sold in inter-state sale and minor sale in the State of Punjab. The goods which are exported out of India, on them no tax is leviable rather the ITC on such goods is refunded. The petitioner purchases various engineering goods from outside the State of Punjab and some products are purchased from within the State of Punjab after payment of tax. In the year 1998-99, State of Punjab put Punjab Tax on entry of goods into local areas by ordinance which was later on

converted into Act by Punjab Act 9 of 2000 enforced w.e.f. 6.4.2000. The said Act was abolished and thereafter re-introduced in the year 2007. The vires of the Act was challenged in which recovery has been stayed and the matter is still pending adjudication in this Court. The State Government made amendments in the Punjab Value Added Tax Act, 2005 (in short "the Act") by inserting sub sections (7) and (8) to Sections 6 and 13(1A) vide Punjab Ordinance No. 9 of 2011 dated 12.8.2011 w.e.f. 12.8.2011. The said ordinance was replaced later on by Punjab Act No. 26 of 2011 dated 2.11.2011. Government of Punjab issued a notification dated 4.10.2013 under Section 3A of the Punjab Entry Tax Act for granting exemption to all taxable persons from payment of entry tax which was being charged as per the earlier notification dated 18.9.2011/2012. Another notification dated 4.10.2013 (Annexure P-1) 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. As per the said notification, instead of notifying only the goods under Section 6(7) of the Act, the State Government has also provided for levy, exemption and mechanism of charging the said tax. In pursuance thereto, the petitioner moved an application dated 18.6.2015 (Annexure P-2) along with document for exemption of advance tax, but to no effect. Thereafter, the petitioner sent a reminder dated 20.8.2015 (Annexure P-3) to respondent No.2 for exemption from payment of advance tax, but 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 moved an application dated 18.6.2015 (Annexure P-2) followed by a reminder dated 20.8.2015

(Annexure P-3) to respondent No.2, 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.2 to decided the application dated 18.6.2015 (Annexure P-2) followed by a reminder dated 20.8.2015 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

August 31, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**