IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18658 of 2015

Date of Decision: 4.9.2015

M/s Karam Singh Contractor

....Petitioner.

Versus

State of Punjab and others

...Respondents.

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

PRESENT: Mr. Munish Bansal, 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 as sales tax under Section 10-C of the Punjab General Sales Tax Act, 1948 (in short “the Act”) along with interest @ 1.5% per month.

2. The petitioner is a contractor and had undertaken certain construction work/works contract at the instance of office of the Executive Engineer, Drainage Construction Division, Faridkot at Gidderbaha (District Muktsar) during the period from 1997-98 to 2004-05. The said office while making payments to the petitioner had deducted sales tax under Section 10-C of the Act @ 2% amounting to ₹ 3,75,392/- vide certificates (Annexure P-1 Colly) and deposited the same with respondent No.3. The vires of Section 10-C of the Act were challenged by various writ petitions and this Court vide order dated

13.8.2008 passed in CWP No. 19579 of 2002 declared Section 10-C of the Act as ultra vires and had struck it down as to be unconstitutional. While allowing the said writ petition, this Court had not granted any interest on the amount of tax deducted against which one of the writ petitioners filed LPA which was allowed by this Court and interest @ 1.5% per month till the date of payment was granted. In a similar case, this Court vide order dated 25.9.2013 passed in CWP No. 9912 of 1998 granted liberty to the petitioner therein to approach the respondents for the refund of sales tax deducted under Section 10-C of the Act. The petitioner moved a demand notice-cum-representation dated 30.12.2014 (Annexure P-2) before respondent No.3 for the refund. Since no response was received, the petitioner sent a reminder dated 2.3.2015 (Annexure P-3) for refund of the sales tax so deducted, but to no effect. In the meantime, respondent No.3 sent a notice dated 25.6.2015 (Annexure P-4) to the petitioner for appearance on 6.7.2015 along with documents. In response to the said notice dated 25.6.2015 (Annexure P-4), the petitioner filed reply dated 6.7.2015 (Annexure P-5) before respondent No.3, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner has filed reply dated 6.7.2015 (Annexure P-5) to the notice dated 25.6.2015 (Annexure P-4) issued by 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 decide the matter taking into consideration the reply dated 5.7.2015

(Annexure P-5) filed by the petitioner, in accordance with law by passing a speaking order and after affording an opportunity of hearing to him within a period of three months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

September 4, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**