IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21008 of 2015

Date of Decision: 1.10.2015

Varsha Construction Company, Abohar

....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(s).

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 21008 and 21018 of 2015 as according to learned counsel for the petitioners, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 21008 of 2015.

2. 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.

3. The petitioner is a contractor and had undertaken certain construction work/works contract at the instance of offices of the Abohar Canal Division, Abohar during the periods from 2001-02 to 2004-05, Irrigation Project Sub Division No.2, Drainage, Malout from 2001-02 to 2002-03, Irrigation Project Sub Division No.2 Drainage, Gidderbaha for

2000-01, Sirhind Feeder Sub Division, Gidderbaha from 2001-02, Mech Drainage Construction Division, Ferozepur for 2003-04, Rajasthan Feeder Division, Ferozepur from 2000-01 to 2001-02, Eastern Canal Division, Ferozepur for 2003-04 and Drainage Construction Division, Faridkot at Gidderbaha during the period 2001-02. The said offices while making payments to the petitioner(s) had deducted sales tax under Section 10-C of the Act @ 2% amounting to ₹ 2,27,677/- 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 No. 740 of 2009 which was allowed by this Court vide order dated 26.8.2009 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(s) moved a demand notice dated 1.3.2015 (Annexure P-2) before respondent No.3 for the refund. Since no response was received, the petitioner(s) sent a reminder dated 3.6.2015 (Annexure P-3) for refund of the sales tax so deducted, but no response has been received till date. Hence, the present writ petition.

4. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioner(s) has sent a demand notice dated 1.3.2015 (Annexure P-2) followed by a reminder dated

3.6.2015 (Annexure P-3) to respondent No.3, but no action has so far been taken thereon.

5. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petitions by directing respondent No.3 to take a decision on the demand notice dated 1.3.2015 (Annexure P-2) followed by a reminder dated 3.6.2015 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner(s) within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case the petitioner(s) is found entitled to the amount, the same shall be released to the petitioner(s) in accordance with law within next one month.

(AJAY KUMAR MITTAL)
JUDGE

October 1, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**