IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21828 of 2015

Date of Decision: 12.10.2015

M/s Lakhwinder Singh Tung Builders

....Petitioner.

Versus

State of Punjab and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. J.S. Bedi, 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 to release its refund claim along with interest.

2. The petitioner is a work contractor and the contractee from whom the petitioner is working is to deduct the tax at source @ 6% while making the payment in terms of Section 27 of the Punjab Value Added Tax Act, 2005 (in short "the Act"). The petitioner is regularly purchasing the goods like cement, crusher, sand, woods, PVC fittings, Hardware items, marbles, tiles, sanitary items, kota stone, electrical items etc. against the valid VAT invoices. It is also making the payment of advance

tax at the time of import of goods in the State of Punjab. After calculating the output tax liability, excess amount of credit is lying with the department for which the petitioner is entitled to refund as while making the deduction of tax at source in terms of Section 27 of the Act, the contractee deducts the TDS even on the labour portion. The petitioner applied for grant of refund amounting to ₹ 3,79,07,346/- vide Form No.29 on 8.5.2015 (Annexure P-1) for the period of 1.4.2014 to 31.3.2015. The petitioner was issued a notice dated 1.6.2015 (Annexure P-2) by respondent No.4 that none of the case 2009 onwards has been assessed so far, therefore, there was no possibility of setting of output liability, if any. It was also mentioned therein by respondent No.3 that assessment proceedings would be initiated through notice. Vide letter dated 4.6.2015, the petitioner was directed to get its cases assessed and apply afresh for refunds thereafter. A notice dated 3.8.2015 (Annexure P-4) was issued for framing the assessment under Sections 29(2) and 29(4) of the Act read with Section 9(2) of the Central Sales Tax Act, 1956 for the assessment years 2010-11 and 2011-12. Thereafter notice dated 31.8.2015 (Annexure P-5) was issued to the petitioner for assessment year 2008-09. The petitioner requested the respondents for deciding the refund application, Annexure P-1, 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 has applied for refund for the period from 1.4.2014 to 31.3.2015 vide VAT-29 (Annexure P-1), 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.4 to take a decision on the release refund claim of the petitioner, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order. 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 it within next two weeks, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

October 12, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**