IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23184 of 2015

Date of Decision: 31.10.2015

M/s J.K. Associates, Sangrur

....Petitioner.

Versus

Excise and Taxation Commissioner, Patiala 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 SHEKHER DHAWAN.

PRESENT: Mr. Manish Kumar 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 to refund the excess ITC to the petitioner in view of order dated 26.6.2013 (Annexure P-2) passed by respondent No.2 along with all consequential benefits.

2. As per the averments made in the writ petition, the petitioner is a partnership firm carrying on the business of construction etc. mainly of roads in the State of Punjab. It is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short “the Act”) having TIN No. 03591000720. The petitioner has filed all its statutory quarterly returns and also the annual return under the Act. Since the commencement of

the Act, due to deduction of tax at source and input tax, credit tax available on the purchases made by the petitioner within the State of Punjab, the petitioner gets refund every year. The petitioner filed quarterwise applications for claim of provisional refund on different dates as mentioned in para 6 of the Writ petition. As per Rule 52(10) of the Punjab Value Added Tax Rules, 2005, the refund is to be issued within a period of sixty days from the date of submission of application for refund. The petitioner had got only one refund for the first quarter amounting to ₹ 31,73,342/- on 13.2.2012 without any interest and after delay of more than two months. However, no refund was made for the second and third quarters after the expiry of sixty days from the date of claim applications. Thereafter, the case of the petitioner was selected for assessment under Section 29(2) of the Act and notice was issued for 25.1.2013. Respondent No.4 vide order dated 4.4.2013 (Annexure P-1) made the assessment by allowing expenses towards labour and services at ₹ 14,43,92,531/- against ₹ 17,72,54,751/- and determined a sum of ₹ 42,85,570/- as excess ITC refundable to the petitioner. The said amount was paid to the petitioner on 15.5.2013 but without any interest. Feeling aggrieved, the petitioner filed an appeal against the disallowance of expenses towards labour and services of ₹ 3,28,62,220/- before respondent No.2 who vide order dated 26.6.2013 (Annexure P-2) allowed the appeal. Thereafter, the petitioner filed an application dated 21.10.2013 along with VAT-29 for refund. On 11.4.2014, the petitioner submitted a written request and again visited the office of respondents No.3 and 4 and submitted an application dated 19.5.2014 to respondent No.3 for refund along with interest. However, respondent No.4 vide order dated 21.5.2014 (Annexure P-3) released a sum of ₹ 10,06,020/-

as against refund claim of ₹ 17,34,521/-. The petitioner moved an application dated 22.5.2014 to respondent No.3 along with the calculations of interest, Form VAT-29 etc., but to no effect. Thereafter, the petitioner filed a detailed application dated 16.6.2014 (Annexure P-4) for rectification of the refund order along with calculations, Annexures P-5 and P-6, 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 submitted an application dated 16.6.2014 (Annexure P-4) along with calculations, Annexures P-5 and P-6 to respondent No.4, 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 application dated 16.6.2014 (Annexure P-4) along with calculations, Annexures P-5 and 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 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 released to it within next one month, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

October 31, 2015 **(SHEKHER DHAWAN)**
gbs **JUDGE**