IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23499 of 2015

Date of Decision: 3.11.2015

M/s Garg Cotex Pvt. Ltd., Samalkha, Panipat

....Petitioner.

Versus

The State of Haryana and another

...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. Avneesh Jhingan, Advocate for the petitioner.

**AJAY KUMAR MITTAL, J.**

1. By way of instant 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 respondent No.2 to refund the amount of ₹ 7,75,318/- for the assessment year 2004-05 and ₹ 4,00,000/- for the assessment year 2005-06 along with interest.

2. The petitioner is in the business of manufacture of yarn, furr etc. at Panipat. The assessment of the petitioner was finalized for the assessment years 2004-05 and 2005-06 and its claim that 50% of the tax benefit should be calculated first and thereafter the credit of input tax be given, was rejected by the authorities. The assessment was framed by first deducting the input tax credit and thereafter 50% of the tax

benefit was calculated. The said orders were challenged upto Tribunal who dismissed the appeals in view of its decision. Thereafter, the matter came to this Court in VAT Reference Nos. 28 of 2010 for the assessment year 2004-05 and 30 of 2010 for the assessment year 2005-06. This Court vide orders dated 11.8.2014 and 13.8.20I4 (Annexure P-1 Colly) disposed of the said matters. It was held by this Court that the dealer is entitled to benefit of input tax credit while calculating 50% deferred tax upfront to be paid by it. During the pendency of the litigation, the department made recovery of the demand created for the assessment years 2004-05 and 2005-06 which the petitioner deposited under protest. On receipt of the orders of this Court, the petitioner moved applications dated 10.6.2015 (Annexures P-2 and P-3, respectively) to respondent No.2 for refund of the tax deposited under protest for the assessment years in question. However, no action was taken thereon. Thereafter, the petitioner sent reminders dated 13.7.2015 (Annexure P-4 Colly) to respondent No.2, 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 moved applications dated 10.6.2015 (Annexures P-2 and P-3, respectively) followed by the reminders dated 13.7.2015 (Annexure P-4 Colly) 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 take a decision on the applications dated 10.6.2015 (Annexures P-2 and P-3, respectively) followed by the reminders dated 13.7.2015 (Annexure

P-4 Colly), 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, the same be paid to it within next one month, in accordance with law.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**November 3, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**