IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23850 of 2015

Date of Decision: 6.11.2015

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 HARI PAL VERMA.

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 terms of order dated 29.10.2014 (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 two applications for issuance of provisional refund on 15.5.2013 for the first three quarters, i.e. 1.4.2012 to 31.12.2012 and for the fourth quarter i.e. 1.1.2013 to 31.3.2013 on the basis of its quarterly VAT returns on Form VAT-29. 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. However, no refund was made to the petitioner within six days which has expired on 15.7.2013. The case of the petitioner was selected for assessment under Section 29(2) of the Act and notice was issued for 28.3.2014. Respondent No.4 vide order dated 11.7.2014 (Annexure P-1) made the assessment by determining a sum of ₹ 89,56,309/- as excess ITC refundable to the petitioner. However, no interest under Section 40 of the Act was paid and it was ordered that the TP has claimed deduction of expenses towards labour and services amounting to ₹ 2,96,06,204/- which were disallowed. Feeling aggrieved, the petitioner filed an appeal against the order, Annexure P-1, which was partly allowed vide order dated 29.10.2014 (Annexure P-2). The petitioner moved an application dated 28.1.2015 (Annexure P-3) to respondent No. 4 for refund of ₹ 16,06,180/- along with interest under Section 40 of the Act, but to no effect. Thereafter, the petitioner submitted another application dated 21.8.2015 (Annexure P-4), 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 28.1.2015 (Annexure P-3) followed by another application dated 21.8.2015 (Annexure P-4) 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.4 to decide the applications dated 28.1.2015 (Annexure P-3) and dated 21.8.2015 (Annexure P-4), 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 any amount is found payable to the petitioner, the same be released to it within next one month, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

November 6, 2015
gbs

(HARI PAL VERMA)
JUDGE