**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No. 6416 of 2005 (O&M)
Date of decision: 22.7.2016

Epic Food Products Private Limited .. Petitioner

vs

The State of Punjab and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Kashmiri Lal Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate, for the petitioner.

Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

Rajesh Bindal, J.

This order will dispose of two CWP Nos. 6416 and 9988 of 2005, as common questions of law and facts are involved therein.

However, the facts have been extracted from CWP No. 6416 of 2005.

Challenge in the present petition is to the orders dated 30.9.2004 (Annexure P-2) passed by the Assistant Excise and Taxation Commissioner and order dated 15.2.2005 (Annexure P-4), passed by Sales Tax Tribunal (for short, 'the Tribunal'). Challenge is limited to charging of interest on the amount of tax assessed.

Learned counsel for the petitioner submitted that the petitioner was working as Franchisee of a soft drink known as 'Frooti'. Upto 25.1.2000, the rate of tax on sale thereof was 8%. The rates were provided in terms of notification under Section 5(1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). By issuing Ordinance dated 25.1.2000, the rates of tax were amended. The product, in which the petitioner was dealing, was not specifically mentioned, hence, it fell in residual category, where rate of tax was 12%. The change was neither noticed by the petitioner nor its counsel and the tax was continued to be charged @ 8% from the buyers and deposited accordingly. The assessment of the petitioner was framed vide order dated 26.8.2003 accepting the rate of tax @ 8%. The revisional proceedings were initiated against the petitioner on audit objection regarding rate of tax. Vide impugned order dated 30.9.2004, the Revisional Authority assessed the differential amount of tax and also levied interest for the intervening period. As there was no dispute about the demand raised on account of differential rate of tax, the amount was deposited by the petitioner, however, demand of interest was challenged before the Tribunal, who vide order dated 15.2.2005, dismissed the appeal.

Referring to the judgment of Hon'ble Supreme Court in *J. K. Synthetics Limited vs Commercial Taxes Officer* (1994) 4 Supreme Court Cases 276, which was followed in *Paul Motor Store vs State of Punjab* (2007) 10 VST 259 (P&H), it was submitted that as the amount of tax demanded was paid within the time permitted, there was no question of charging of interest, as the amount of tax found to be due was required to be paid at that time. He further referred to an earlier order passed by the Sales Tax Tribunal-I, Punjab, in *M/s Fazilka Gas Service, Fazilka vs State of Punjab* (2004) 24 PHT 265, where demand of interest under similar circumstances was set aside by the Tribunal but the decision was not followed in the case in hand.

On the other hand, learned counsel for the State, while not disputing the judgments referred to by counsel for the petitioner, submitted that once it is established that the amount of tax as was due in terms of the provisions of the Act and the notification issued thereunder had not been paid along with the returns, there is nothing wrong in raising the demand of interest for its delayed payment. She could not dispute the fact that even the assessing authority had committed error in accepting the returns and framing assessment while charging rate of tax at 8% for part of the year as against 12%.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that the rate of tax for the product dealt with by the petitioner was 8%. The same was changed vide Ordinance dated 25.1.2000. On account of lack of knowledge on the part of the petitioner and its counsel, the tax was charged and deposited @ 8%. The assessing authority also framed assessment on 26.8.2003 accepting the tax @ 8%. The issue was raised by the audit party. Thereafter, the matter was taken up in revision. Demand for difference of tax was raised. In addition, the interest was also levied. The petitioner did not dispute the demand of tax and deposited the same within the time permitted. The issue raised was regarding demand of interest. The order of Revisional Authority was challenged before the Tribunal, who did not accept the plea of the petitioner and rejected the appeal.

Similar issue came up before this Court in *Paul Motor Store's* case (supra). In that case the tax as assessed initially at the time of assessment was paid, however, in re-assessment proceedings, additional tax was found to be due for which interest and penalty was levied. The demand of interest on that account was quashed by this Court while referring to judgments of Hon'ble the Supreme Court in *J. K. Synthetics Limited*'s (supra), *Frick India Limited vs State of Haryana* (1994) 95 STC 188, *Maruti Wire Industries Private Limited vs Sales Tax Officer* (2001) 122 STC 410 and Full Bench judgment of this Court in *United Riceland Limited vs State of Haryana* (1997) 104 STC 362. It was on the premise that an assessee cannot foresee the additional demand of tax on account of re-assessment or in revision and the interest would become payable only from the date, the demand is raised and not from the date of filing of return.

For the reasons mentioned above, the writ petitions are allowed. The demand of interest created against the petitioner is set aside.

(Rajesh Bindal)
Judge

22.7.2016 (Harinder Singh Sidhu)
vs Judge

Whether speaking/ reasoned Yes/No
Whether Reportable Yes/No