IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.13131 of 2016 (O&M)
Date of Decision: August 01, 2016

M/s NSC Projects (P) Ltd. ...Petitioner
Versus
State of Punjab and others …Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Avneesh Jhingan, Advocate for the petitioner.

Mr.Jagmohan Bansal, Additional AG, Punjab.

RAJESH BINDAL, J.

The petitioner approached this court seeking a direction to the respondents to refund an amount of ₹ 19,53,605/-.

Learned counsel for the petitioner submitted that assessment of the petitioner for the year 2013-14 was framed by the Assessing Authority vide order dated 3.7.2015 and a refund of ₹ 74,89,218/- was determined. The amount was payable on application filed by the petitioner.

The petitioner through counsel filed application for refund on 27.7.2015. Part of the amount due to the petitioner, namely ₹ 55,35,613/- was transferred in the bank account of the petitioner on 24.12.2015, whereas, the balance amount has not been refunded till date despite reminders dated 28.12.2015 and 22.2.2016.

He further submitted that in terms of provisions of Section 40 of the Punjab Value Added Tax Act, 2005 (for short `the Act'), the petitioner is also entitled to interest on delayed refund of the amount @ 6% per annum for the period, 60 days after the filing of the refund application till the amount is refunded.

On instructions from Gurjit Singh, ETO, Amritsar-II and without prejudice to the right of the Department to take any appropriate proceedings, in this regard, learned counsel for the respondents stated that partly the amount has already been refunded as admitted by the petitioner, whereas, the balance amount shall be refunded to the petitioner within one month from today. He further submitted that as the amount has been refunded without much delay, the petitioner is not entitled to any interest.

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

The fact that in the assessment for the year 2013-14 as framed vide order dated 3.7.2015 the petitioner was found entitled to refund of ₹ 74,89,218/- is not in dispute. The petitioner filed application for refund of the amount on 27.7.2015. Further, it is not in dispute that part of the amount refundable to the petitioner on assessment i.e. ₹ 55,35,613/- was refunded to the petitioner by transferring the same in its bank account on 24.12.2015. The balance of ₹ 19,53,605/- was not refunded without there being any reason. As the stand taken by the learned counsel for the respondents is that balance amount shall be refunded within one month from today, while accepting the same, no direction, as such, is required to be issued.

As regards the claim of interest on the delayed refund of the amount is concerned, Section 40 of the Act, as is reproduced hereunder, explicitly provide that if the amount is not refunded to the person within sixty days from the date of application, simple interest @ ½% per month is payable for the period immediately following the expiry of the period of sixty days till the date of refund.

> *"Section 40. : Where an amount required to be refunded by the Commissioner or the designated officer, to any person, is not so refunded to him within a period of sixty days from the date of the application, a simple interest at the rate of half per cent per month on the said amount shall be paid to such person from the date, immediately following the expiry of the period of sixty days to the date of the refund."*

In the present case, application for refund of the amount due as per the assessment was filed by the petitioner on 27.7.2015. The amount was not refunded till 27.9.2015. Partly, the same was refunded on 24.12.2015 and party is yet to be refunded.

Considering the provisions of Section 40 of the Act, as referred to above, in our opinion, the petitioner is also entitled to interest @ ½% per month for the period commencing after expiry of 60 days from the date of application dated 27.7.2015 filed for refund, till the amount is actually refunded to the petitioner. The amount of interest be calculated and paid along with the refund of the balance amount of ₹ 19,53,605/-.

Petition stands allowed accordingly.

(RAJESH BINDAL)
JUDGE

August 01, 2016
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(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned : Yes/ No

Whether reportable : Yes/ No