IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7602 of 2016

Date of Decision: 26.4.2016

M/s Rohan Rajdeep Tollways, Samundra, Garhshankar, Hoshiarpur.

Versus

The State of Punjab 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 MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Dr. Naveen Rattan, 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 respondent No.2 to refund the amount of ₹ 1,46,16,135/- as per application dated 28.10.2015 (Annexure P-9) on account of excess Input Tax Credit (ITC) created by respondent No.2 vide order dated 18.5.2015 (Annexure P-1).

2. The petitioner is engaged in the business of construction of roads on the basis of BOT and Non-BOT and is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short "the Act") having TIN No. 0330201183. The petitioner is filing its returns regularly. A notice under Section 29(2) of the Act was issued to the petitioner for

framing assessment for the period 2010-11 and vide order dated 18.5.2015 (Annexure P-1), excess refund of ₹ 1,65,24,427/- was made. The Assistant Excise and Taxation Commissioner (AETC) vide order dated 31.1.2014 (Annexure P-2) made re-assessment under Section 29 (7) of the Act for the period 2009-10 and created an additional demand of ₹ 76,33,166/-. The petitioner assailed the order, Annexure P-2, in appeal on 15.4.2014, Annexure P-3, before the Deputy Excise and Taxation Commissioner (DETC). The DETC vide order dated 16.12.2014 (Annexure P-4) ordered for deposit of 25% of the additional demand, i.e. ₹ 19,08,292/-, against which the petitioner filed CWP No. 5943 of 2015. This Court vide order dated 23.12.2015 (Annexure P-5) passed in connected CWP No. 26920 of 2013 directed the DETC to hearing the appeal on merits. The amount of 25% was adjusted by the department vide certificate dated 29.3.2016 (Annexure P-6). Respondent No.3 vide assessment order dated 26.10.2015 (Annexure P-7) framed the assessment for the period 2012-13 creating additional demand of ₹ 1,01,81,549/-. The petitioner Form VAT-29 on 28.10.2015 (Annexure P-8) for refund. The petitioner also moved an application dated 28.10.2015 (Annexure P-9) along with prescribed proforma to respondent No.2 to retain 25% i.e. ₹ 19,08,292/- against the additional demand of ₹ 76,33,166/- for the period 2009-10 and refund the balance amount of ₹ 1,46,16,135/- along with interest. The petitioner filed an appeal on 22.12.2015 (Annexure P-10) along with stay application dated 22.12.2015 (Annexure P-11) against the order, Annexure P-7, passed by respondent No.3 before the DETC vide postal receipt dated 22.12.2015 (Annexure P-12). Respondent No.3 vide order dated 23.12.2015 (Annexure P-13) issued notice for adjustment of outstanding for the period 2012-13 against the refundable amount of ₹ 1,46,16,135/-. The petitioner submitted reply dated 7.1.2016 (Annexure P-14) to the said notice through e-mail. However, till date no action has been taken on the refund application dated 28.10.2015 (Annexure P-9). 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 an application dated 28.10.2015 (Annexure P-9) to 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 application dated 28.10.2015 (Annexure P-9), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

April 26, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**