IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8882 of 2016

Date of Decision: 9.5.2016

M/s Kissan Agro Foods Pvt. Ltd., Kotkapura

....Petitioner.

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: Mr. Rishab 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 respondent No.3 to decide its application dated 31.3.2016 (Annexure P-5) for exemption from payment of advance tax to 0%.

2. The petitioner is engaged in the business of manufacturing of tax-free commodities, i.e., Atta, Maida, Suji and Choker. For the manufacturing of said items, wheat is purchased which is exigible to purchase tax under Section 19 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) if purchased from within the State of Punjab and is liable to advance tax if the same is imported from other States. Since

the petitioner is manufacturing tax-free goods, advance tax paid on wheat on import is being accumulated as excess Input Tax Credit (ITC) as it is not having any tax liability on the sale of tax free goods. State of Punjab in the year 1999 introduced Punjab Tax on Entry of Goods into Local Areas Ordinance, 1999 which was later on converted into The Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Punjab Act No. 9 of 2000) enforced w.e.f. 6.4.2000. To implement the policy of the State, the entry tax was abolished by way of omission of items in the Schedule vide notification dated 1.4.2005 and the earlier notifications for the levy of tax were rescinded w.e.f. 1.4.2005 vide notification dated 1.4.2005. The Punjab Government vide notification dated 15.11.2007 re-introduced the levy of entry tax on certain items which had earlier been stopped in view of corporation of the Act. Various persons challenged the levy of entry tax and vires thereof by filing different writ petitions. This Court vide order dated 28.3.2011 passed in CWP No. 15378 of 2008 stayed the recovery of entry tax subject to certain compliances including the furnishing of undertaking and an affidavit to the effect that in case the writ petition is subsequently dismissed by this Court, then the said person would be liable to pay the entry tax along with interest. The benefit of the interim order was extended to other persons also including the petitioner by the State Government by issuing circulars dated 29.4.2011 and 17.5.2011. Subsequent to the interim order passed by this Court, the respondents have issued an Ordinance vide notification dated 2.11.2011 with retrospective effect from 21.11.2007 vide which the Entry Tax Act has been amended and definition of goods has been changed along with charging Section 3A. The tax has been levied on the entry of goods into local areas as referable to Entry 52 of List II of Seventh Schedule. A consolidated notification for the levy of entry tax was also issued on 18.9.2012. The State Government made amendments in the Act and inserted sub-sections (7) and (8) to Sections 6 and 13(1A) vide Punjab Ordinance dated 12.8.2011 w.e.f. 12.8.2011. A notification dated 4.10.2013 was issued under Section 3A of the Entry Tax Act granting exemption to all taxable persons from the payment of entry tax on whom the tax was being charged vide notification dated 18.9.2011/2012. Simultaneously, notification dated 4.10.2013 was issued under Section 6(7) of the Act notifying 30 goods for imposition of Tax. In pursuance thereto, the petitioner applied for exemption from the payment of advance tax vide application dated 1.4.2015 (Annexure P-1), but to no effect. Thereafter, the petitioner filed CWP No. 13074 of 2015 and this Court vide order dated 9.7.2015 (Annexure P-2) directed the respondent to decide the application for exemption from payment of advance tax by 31.7.2015. The Deputy Excise and Taxation Commissioner, Faridkot, vide ldetter dated 30.12.2015 (Annexure P-3) granted exemption to the petitioner from the payment of advance tax by reducing the rate of advance tax @ 1% till 30.6.2016. The excess ITC was being accrued to the petitioner even after the reduction of rate of advance tax to 1% as per the return, Annexure P-4, filed for the quarter ending 31.3.2016 wherein it is having excess of ₹ 46,27,853/-. Therefore, the petitioner applied for issuance of certificate for exemption on 0% vide application dated 31.3.2016 (Annexure P-5) before respondent No.3, 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 an application

dated 31.3.2016 (Annexure P-5) before respondent No.3, 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.3 to decide the application dated 31.3.2016 (Annexure P-5), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three weeks from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

May 9, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**