IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-17594-2017

Date of Decision: 9.8.2017

M/s Ashish Kumar & Co., L-1, Model Town, Sonepat
....Petitioner.

Versus

State of Haryana and others
...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.

PRESENT: Mr. Rajiv Agnihotri, 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 allow interest on the amount of tax deposited for entertainment of appeal claimed vide submissions dated 30.6.2017 (Annexure P-6) became due as per order dated 15.9.2014 (Annexure P-4) passed by this Court in VATAP-60-2013 for the assessment year 2001-02 and subsequently directed refund vide order dated 3.5.2016 (Annexure P-5) passed in CWP-8321-2016 from the date of payment till the date of refund allowed.

2. The petitioner is engaged in the business of trading of Indian Made Foreign Liquor (IMFL). The Assessing Authority framed the assessment for the year 2001-02, vide assessment order dated 14.10.2002 (Annexure P-1). Subsequently, the case was taken in revision under Section

40 of the Haryana General Sales Tax Act, 1973 and vide order dated 10.9.2007 (Annexure P-2), additional demand was created against the petitioner. Feeling aggrieved, the petitioner filed an appeal before the Haryana Tax Tribunal (in short "the Tribunal") and on the direction of the Tribunal, deposited the additional demand. The Tribunal vide order dated 29.11.2011 (Annexure P-3) rejected the appeal. Against the order, Annexure P-3, the petitioner filed VATAP No. 79 of 2013 and this Court vide a common order dated 15.9.2014 (Annexure P-4) passed in VATAP No.60 of 2013 decided question No. (ii), i.e. "whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the order of the Ld. Revisional Authority wherein he has raised the demand on account of undue enrichment despite the fact that the appellant did not charge any tax from its customers in the invoices" in favour of the petitioner. The petitioner approached the department for refund of the amount deposited along with interest, but to no effect. Thereafter, the petitioner filed CWP No. 8321 of 2016 and this Court vide order dated 3.5.2016 (Annexure P-5) disposed of the said writ petition with a direction to respondent No.4 to take a decision on the submission dated 21.4.2015, in accordance with law and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of the certified copy of the order. It was further directed that in case the petitioner was found to be entitled to the amount of refund, the same was to be paid within next one month, in accordance with law. The amount of refund was paid to the petitioner vide refund order dated 26.8.2016 but without any interest. Accordingly, the petitioner filed written submissions dated 30.6.2017 (Annexure P-6) to respondent No.4 for the payment of interest for

the period starting from the date of actual payment made till the date of refund, 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 filed written submissions dated 30.6.2017 (Annexure P-6) 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 take a decision on the submissions dated 30.6.2017 (Annexure P-6), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of the order. It is further directed that in case it is found that the petitioner is entitled to the amount of interest, the same be paid to it within next one month, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 9, 2017 **(AMIT RAWAL)**
gbs **JUDGE**

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No