IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-26579-2017

Date of Decision: 22.11.2017

M/s Alstrong Enterprises India Pvt. Ltd., Jalandhar

....Petitioner.

Versus

State of Punjab and another

...Respondents.

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

PRESENT: Mr. Varun Chadha, 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 refund ₹ 10,80,000/- along with interest for encashing the bank guarantee furnished for the release of goods as the order of penalty had been quashed by the Punjab Value Added Tax Tribunal (in short "the Tribunal") vide order dated 19.8.2016 (Annexure P-3).

2. The petitioner is registered under the provisions of Punjab Value Added Tax Act, having TIN No. 03772079940. The petitioner also has a manufacturing unit in the State of Jammu and Kashmir. The petitioner is filing its statutory returns and is paying tax regularly. On 23.9.2013, the Jammu unit of the petitioner made a branch transfer of Aluminum Panel Sheets valuing ₹ 22,54,818/- to its warehouse at Zirakpur meant for Rail

Coach Factory, Kapurthala. On inspection, the goods were rejected and the petitioner prepared the documents for sending the same back to Jammu unit. The vehicle carrying the goods back to Jammu was intercepted near Morinda on 26.9.2013 and was detained for non-furnishing requisite information at any ICC and the goods loaded in the vehicle did not match with the description of goods mentioned in the invoice. However, the goods were released on 2.10.2013 against the bank guarantee of ₹ 10,80,000/-. The Assessing Officer vide order dated 10.10.2013 (Annexure P-1) imposed a penalty of ₹ 10,80,000/-. Feeling aggrieved by the penalty order, the petitioner filed an appeal before the First Appellate Authority who vide order dated 21.8.2014 dismissed the appeal. Against the order dated 21.8.2014, the petitioner filed second appeal before the Tribunal. During the pendency of the appeal, respondent No.2 encashed the bank guarantee submitted by the petitioner without any intimation as is discernible from the letter dated 13.3.2015 (Annexure P-2). The Tribunal vide order dated 19.8.2016 (Annexure P-3) quashed the penalty order holding that there was no attempt to evade tax. Accordingly, the petitioner vide application dated 25.10.2016 (Annexure P-4) requested respondent No.2 for refund of ₹ 10,80,000/-, but to no effect. Thereafter, the petitioner sent reminders dated 12.12.2016, 20.1.2017, 2.3.2017 and 4.11.2017 (Annexures P-5 to P-8, respectively) to respondent No.2, 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 sent a refund application dated 25.10.2016 (Annexure P-4) followed by the reminders (Annexures P-5 to P-8, respectively) 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 refund application dated 25.10.2016 (Annexure P-4) followed by the reminders dated 12.12.2016, 20.1.2017, 2.3.2017 and 4.11.2017 (Annexures P-5 to P-8, respectively), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of the certified copy of the order. It is further directed that in case the petitioner is found entitled to the refund, the same be released to it within next two weeks in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

November 22, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**