IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-29092-2017

Date of Decision: 20.12.2017

M/s Goodyear India Ltd., New Delhi

....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 refund the interest for the amount deposited with the Sales Tax Department on 24.1.2017 (Annexure P-7) and claimed vide submissions dated 9.3.2015, 30.3.2015, 29.12.2015 (Annexure P-6 Colly), 19.7.2017 and 1.8.2017 (Annexure P-14 Colly) became due for the assessment years 1973-74 to 1977-78 and 1980-81.

2. Government of Haryana levied purchase tax on the goods purchased in Haryana without payment of tax against Declaration Form ST-15, consumed in manufacturing of finished goods and the stock transferred to other locations outside Haryana on pro rata basis of sales v. stock transfers. The petitioner challenged the levy of said purchase tax for the assessment years 1973-74 to 1977-78 and 1980-81 by way of writ petition

and this Court vide order dated 4.12.1982 quashed the assessment orders for the assessment years in question with liberty to the Assessing Authority to re-assess the petitioner for the same years. The amount of tax was deposited. The Sales Tax Department filed SLP before the Apex Court who vide interim order directed the State to refund the tax of ₹ 29.54 lakhs deposited by the petitioner in four equal installments. The Sales Tax Department refunded a total amount of ₹ 22.15 lakhs in three equal installments while upholding the fourth installment due to levy of purchase tax in another matter. This Court in Desh Kumar Pushap Kumar v. State of Haryana upheld the levy of purchase tax. The Sales Tax Department re-assessed the assessment years in question and created an additional demand of ₹ 26.77 lakhs and also levied interest of ₹ 48.86 lakhs. The said re-assessment was challenged by the petitioner before this Court by way of writ petitions which were dismissed by this Court. The petitioner deposited the tax along with interest amounting to ₹ 75.63 lacs. The petitioner also filed SLP before the Supreme Court. The Supreme Court vide order dated 20.7.2001 (Annexure P-1) decided the case in favour of the petitioner and revived the original assessment orders as two assessments (one assessment and other re-assessment). In pursuance thereto, the Sales Tax Department restored the original assessment orders and demanded the tax originally assessed and refund the total amount of ₹ 71.55 lakhs including the interest. The Assessing Authority vide order dated 29.10.2001 (Annexure P-2) adjusted the demand of ₹ 71.55 lakhs against the payment of tax already made and interest of ₹ 75.63 lakhs and refunded the excess tax of ₹ 4.08 lakhs. Feeling aggrieved by the order, Annexure P-2, the petitioner filed appeals and the Appellate Authority vide order dated 21.2.2005 (Annexure

P-3) dismissed the said appeals. Thereafter, the petitioner filed an appeals before the Haryana Tax Tribunal (in short "the Tribunal") against the levy of interest. The Tribunal vide order dated 31.1.2011 (Annexure P-4) allowed the appeals and set aside the orders of payment of penal interest on tax for the assessment years in question. Thus, an amount of ₹ 49.40 lakhs was refundable to the petitioner. In response thereto, the petitioner filed refund application dated 19.5.2011 followed by the reminders, but to no effect. However, respondent No.2 issued refund order dated 4.12.2014 (Annexure P-5) without interest. Thereafter, the petitioners filed applications dated 9.3.2015, 30.3.2015 and 29.12.2015 (Annexure P-6 Colly) and dated 24.1.1997 (Annexure P-7) to respondent No.5 for interest on late payment of refund. The petitioner received a copy of letter dated 9.9.2015 (Annexure P-8) sent by respondent No.2 to respondent No.4 admitting the payment of interest. As per the instructions dated 27.2.2006 (Annexure P-9), the refund should be made soon after the approval thereof. Further, Government of Haryana issued notification dated 30.4.2013 (Annexure P-10) that the refund should be recommended within 30 days before the time prescribed for issuing refund without interest lapses. The Excise and Taxation Commissioner vide memo dated 16.5.2013 (Annexure P-11) issued a detailed circular for approval of refund. However, no refund has been made to the petitioner. Thereafter, the petitioner filed CWP-18336-2016 and this Court vide order dated 20.3.2017 (Annexure P-12) disposed of the said writ petition with a direction that the respondents shall take decision by 5.4.2017 and pay over the amount latest by 17.4.2017. Respondent No.5 vide order dated 5.4.2017 (Annexure P-13) paid the said amount to the petitioner. The petitioner vide submissions dated 19.7.2017 and 1.8.2017 (Annexure P-14 Colly) requested respondent No.5 for refund of the interest on the amount deposited on 24.1.1997, 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 made submissions dated 19.7.2017 and 1.8.2017 (Annexure P-14 Colly) to respondent No.5, 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.5 to take a decision on the submissions dated 19.7.2017 and 1.8.2017 (Annexure P-14 Colly), 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 the certified copy of the order. It is further directed that in case the petitioner is found entitled to the amount of refund of interest, the same be released to it within next one month, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

December 20, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**