

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 1272 of 2017
Date of decision: May 02, 2018**

M/s D.S. Pannu & Associates Pvt. Limited

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Narender Singh, Advocate and Mr. Malkiat Singh,
Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for a direction to respondent No.4 to issue refund due to the petitioner company alongwith statutory interest for the assessment year 2009-10 on the basis of annual return being a case of time barred deemed assessment.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner company is engaged in the construction and repair of roads having taken work contract/tender from the Government and other public sector undertakings. The petitioner is a registered dealer under the Haryana Value Added Tax

Act 2003 (in short, the HVAT Act”) and the Central Sales Tax Act, 1956 (in short, “the CST Act”) as a works contractor. The petitioner is filing regular returns as prescribed under the HVAT Act. Grievance of the petitioner is on account of illegal withholding refund of tax for a sum of ₹ 30,42,838/- for the assessment year 2009-10, the assessment of which has become time barred. Respondent No.4 vide order dated 26.3.2013 passed an ex parte assessment order under Section 15(5) of the HVAT Act raising a demand of ₹ 32,33,710/- as additional tax from the petitioner company. According to the petitioner, the assessment order was totally illegal on merits and in view of the fact that it was not associated and was not served before the finalization of ex parte assessment proceedings. Aggrieved by the order, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) Ambala. Vide order dated 19.11.2013, Annexure P.3, the appellate authority accepted the appeal filed by the petitioner against the assessment order dated 26.3.2013, Annexure P.2. The case was remanded back to the assessing authority for de novo assessment with a direction to allow the TDS after verification. The assessing authority was directed to decide the case within one month from the date of receipt of the order. However, respondent No.4 did not initiate the assessment proceedings de novo. The petitioner submitted all the relevant documents before the assessing authority. According to the petitioner, as per Section 18 of the HVAT Act, the limitation period for assessment in consequence of any order made by any court or authority is two years from the date of receipt of the copy of the order by the assessing authority. In the present case, the assessment for the year 2009-10 became time barred. The petitioner company vide representation dated 14.5.2015, Annexure P.5, requested respondent No.3 to issue refund for the assessment year 2009-10

on the basis of annual return being a case of deemed assessment. The respondents did not release/issue the refund due to the petitioner for the assessment year in question inspite of the fact that the assessment had already become time barred. The annual return for the assessment year in question was submitted well within time on 25.11.2010. A sum of ₹ 30,42,832/- was claimed as refund on account of excess tax deposited/deducted towards its liability for the said year. Hence the instant petition by the petitioner.

3. Reply by way of affidavit of Excise and Taxation Officer, Panchkula, respondent No.4 has been filed wherein it has been inter alia stated that the present petition is not maintainable as the remedy of statutory appeal is available to the petitioner under Section 33 of the HVAT Act before the Joint Excise and Taxation Commissioner (Appeals) against the order dated 29.12.2016, Annexure R.1. It has been further stated that the petitioner had not claimed the refund but had only claimed the excess carried forward amount of ₹ 30,42,838/- to the next year. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner relied upon Section 18(1) of the HVAT Act to urge that the order of assessment/reassessment could be passed by the assessing authority on remand within a period of two years of the receipt of copy of such order by the said authority. Learned counsel submitted that the appellate authority vide order dated 19.11.2013 had remanded the matter for denovo assessment to the assessing authority which was sent by registered post bearing No. 2791 dated 10.12.2013 as per Annexure P.7 appended along with the replication. Learned counsel further

submitted that the assessment order passed on 29.12.2016 attached as Annexure R.1 with the written statement, was clearly beyond limitation and thus no refund could be withheld by the assessing authority.

6. On the other hand, learned counsel for the respondents opposed the prayer made by the petitioner.

7. Undisputedly, vide order dated 26.3.2013, Annexure P.2, respondent No.4 passed an ex parte assessment order under Section 15(5) of the HVAT Act raising a demand of ₹ 32,33,710/- as additional tax from the petitioner company. Aggrieved by the order, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals). Vide order dated 19.11.2013, Annexure P.3, the appeal was allowed and the case was remanded back to the assessing authority for denovo assessment with a direction to allow the TDS after verification. The assessing authority was directed to decide the case within one month from the date of receipt of the copy of the order. Respondent No.4 did not initiate the assessment proceedings denovo. As per Section 18 of the HVAT Act, the limitation period for assessment in consequence of any order passed by any court or authority is two years from the date of receipt of copy of such order Section 18(1) of HVAT, the relevant portion thereof reads thus:-

“18. Period of completion of assessment or assessment or reassessment not to apply in certain cases

(1) Notwithstanding the provisions relating to the period of limitation contained in Section 15, 16 and 17, assessment or reassessment, as the case may be, may be made;-

- (i) In consequences of, or to give effect to, any order made by any Court, or any authority under this Act within a period of two years of receipt of copy of such order by the assessing authority;

(ii) XXXXXX.....”

In the present case, the initial assessment order dated 26.3.2013 had been set aside which was sent by registered post bearing No. 2791 dated 10.12.2013 as per Annexure P.7 appended alongwith replication. The assessment order in pursuance of remand order passed on 29.12.2016 as per Annexure R.1 attached with the written statement, was clearly barred by limitation as it had not been passed within the limitation period. Accordingly, the assessment of the petitioner company would be governed by Section 15(1) of the Act as a case of deemed assessment in terms of the return filed on 25.11.2010 wherein the petitioner had claimed refund on account of excess tax deposited/deducted towards its liability for the said year. Thus, the petitioner was entitled to refund of ₹ 30,42,838/- in accordance with law.

8. In view of the above, the writ petition is allowed. The petitioner company shall be given refund of the amount of ₹ 30,42,838/- within a period of one month from the date of receipt of a copy of this order in accordance with law.

(Ajay Kumar Mittal)
Judge

May 02, 2018
‘gs’

(Anupinder Singh Grewal)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes