IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-24592-2018

Date of Decision: 26.11.2018

M/s Mastana Foods Pvt. Ltd.

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Rajiv Sharma, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing respondent No.2 to issue VAT refunds amounting to ₹ 27,99,214/- along with interest allowed by the Haryana Tax Tribunal, Chandigarh (in short "the Tribunal") vide a common order dated 13.3.2018 (Annexure P-2).

2. The petitioner is engaged in the business of a rice mill having TIN No.06572105657. The assessment order dated 13.8.2010 was passed by respondent No.2 for the assessment year 2007-08. Another assessment order dated 11.1.2012 was passed for the assessment year 2008-09. The assessment order dated 123.8.2010 was revised vide revisional order dated 5.1.2016 by the Revisional Authority-cum-Joint Excise and Taxation Commissioner, Kaithal whereby a demand of ₹ 19,58,424/- was created for

the assessment year 2007-08, out of which a sum of ₹ 1,15,933/- were levied under the Haryana Value Added Tax Act, 2003 (in short "the Act") and ₹ 18,42,491/- under the Central Sales Tax Act, 1956 (hereinafter referred to as "the 1956 Act"). Similarly, the assessment order dated 11.1.2012 was revised vide order dated 5.1.2016 and a fresh demand of ₹ 85,898/- under the Act and ₹ 7,54,892/- under the 1956 Act were created. Thus, the total combined tax liability of ₹ 27,99,214/- was levied for the assessment years 2007-08 and 2008-09. The revisional orders for the subsequent assessment years 2009-10 and 2011-12 were also passed against which the appeals are pending before the Tribunal. The tax liability of ₹ 27,99,214/- was paid vide order dated 31.3.2016 in separate assessment proceedings for the year 2012-13 wherein a refund of ₹ 11,91,247/- was ordered to be paid to the petitioner. The total tax liability for the assessment years 2007-08 to 2011-12 amounting to ₹ 73,48,484/- was deducted from the said refund as is clear from the Form VAT G9 dated 31.10.2016 (Annexure P-1). In the appeals against the revisional orders dated 5.1.2016 for the assessment years 2007-08 and 2008-09, the Tribunal vide a common order dated 13.3.2018 (Annexure P-2) allowed the appeals and set aside the said orders. Thus, the petitioner was entitled to a refund of ₹ 27,99,214/-. Accordingly, the petitioner moved an application dated 16.4.2018 (Annexure P-3) followed by the reminders dated 1.7.2018 and 23.7.2018 (Annexures P-4 and P-5, respectively) to respondent No.2 for refund of the amount in question, 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

16.4.2018 (Annexure P-3) followed by the reminders dated 1.7.2018 and 23.7.2018 (Annexures P-4 and P-5, respectively) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the parties, 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 application dated 16.4.2018 (Annexure P-3) followed by the reminders dated 1.7.2018 and 23.7.2018 (Annexures P-4 and P-5, respectively), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days 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 of the amount, the same be paid to the petitioner within next 15 days in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

November 26, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**