IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 28711 of 2018
Decided on : 26.11.2018

Arpan Foods Limited and another

. . . Petitioner(s)

Versus

Food Corporation of India and another

. . . Respondent(s)

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

PRESENT: Mr. Aman Bansal, Advocate
for the petitioner(s).

****

AJAY KUMAR MITTAL, J. (Oral)

The prayer made by the petitioners in this writ petition filed under Articles 226/227 of the Constitution of India, is for directing respondent No.1 to decide the representation dated 12.09.2018 (Annexure P-7) and to release the amount with regard to the excess VAT charged from the excess VAT charged from the petitioner Companies (along with interest @ 18%) in violation of the notification dated 25th January, 2014 (Annexure P-1) published by respondent No.2 – State of Punjab.

2. The petitioners are the companies incorporated under the Companies Act, 1956, having its registered offices in District Sangrur. They run food processing units at Dhuri and Sunam of District Sangrur and thus are engaged in the work of buying raw/unprocessed wheat, white flour, semolina etc. The petitioner companies are purchasing unprocessed wheat from respondent No.1 – Food Corporation of India. As per the terms & conditions of the tender process, the bidders have to deposit 10% of the base rates of the wheat against the total quantity of wheat and only thereafter, the successful/highest bidders thereafter have to deposit the total consideration along with the requisite tax. After that the release orders for delivering the wheat to the successful bidders are issued. The wheat was listed at item No.162 in Schedule B appended with the Punjab Value Added Act, 2005 (in short 'the Act of

2005'). Thereafter, vide notification dated 25.01.2014, the State of Punjab made certain amendments in the Act of 2005. As per amendment, a distinction was drawn between wheat not purchased for the purpose of process and wheat purchased for the purpose of process, therefore, the wheat for processing was reduced from 5% to 3% w.e.f. 25.01.2014. But respondent No.1 arbitrarily and illegally continued to charge the un-amended rate of 5% from the petitioners. Despite several visits and requests no positive steps have been taken by the respondents to refund the excess VAT. Respondent No.1 vide letter dated 17.08.2015, sought clarifications from the Department of Excise and Taxation, Punjab regarding the notification dated 25.01.2014 for VAT @ 3% qua wheat purchased for the purpose of processing. The clarification was given by the Joint Excise and Taxation Commissioner (VAT) vide letter dated 20.11.2015. However, in spite of the aforesaid clarification, respondent No.1 continued to charge the VAT @ 5% from the petitioner companies on the wheat purchased for the purpose of processing. Respondent No.1 again vide letter dated 08.02.2016, sought clarification from the Excise and Taxation Department, Punjab, which was re-clarified by the respondent – State vide letter dated 22.03.2016. Despite the aforesaid communications/clarifications, the respondents continuously charged 5% VAT from the petitioner companies. Petitioners never intended to make any attempt to evade tax and they always timely filed their returns, despite the reduction in the rate of tax leviable on the purchase of wheat for the processing, the FCI arbitrarily and illegally continued to charge the un-amended rate of 5% from the petitioners. The petitioners vide representation dated 12.09.2018 requested the respondents to refund the excess VAT paid on the purchase of wheat. It was specifically stated therein that there is no legitimate right of the respondents to withhold the hard earned money of the petitioners, despite the notifications and clarifications issued by the Department. Till now, neither any reply nor any positive steps have been taken by the respondents. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, a representation dated 12.09.2018 (Annexure P-7) was submitted to the respondents, but no decision thereon has been taken by them so far. He, however, prayed that direction be issued to the concerned respondent to decide the representation expeditiously in a time bound manner.

4. After hearing learned counsel for the petitioners, perusing the averments made in the writ petition and without expressing any opinion on the merits of the case, while disposing of the writ petition we direct respondent No.1 to decide the representation dated 12.09.2018 (Annexure P-7), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of 15 days from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 26, 2018
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No