IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.25162 of 2019
Date of decision: 05.11.2019

Jain Brothers alias 'JAIN BROS'

.....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. F.S. Dhiman, Advocate
for the petitioner.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

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GIRISH AGNIHOTRI, J.

This writ petition has been filed by the Jain Brothers alias 'JAIN BROS' (hereinafter called as the 'petitioner') under Article 226 and 227 of the Constitution of India, praying for issuance of writ in the nature of mandamus for directing respondent No.2 to issue the refund of payment of Rs.3,06,20,124/ (Rs. Three crore six lacs twenty thousand one hundred and twenty four only) with interest as due upto 30.06.2017.

2. On 10.09.2019, the Additional Advocate General Punjab was directed to ascertain factual position with regard to inter alia claim made in the writ petition. On 24.09.2019, on behalf of the State of Punjab, more time was sought to file reply.

3. Reply by way of affidavit of Balwinder Singh, Assistant Excise

and Taxation Commissioner, Patiala on behalf of respondents No.1 to 4 has been filed in the Court today and the same is taken on record.

4. Learned counsel for the petitioner has contended (based on averments made in the writ petition) that the petitioner-Firm is a government work contractor. The petitioner has obtained all Punjab Vat, Income Tax, PAN, TDS numbers etc. in the financial year of 2009. It has been further contended that the petitioner-Firm, w.e.f. the financial year 2009, obtained the tender-cum-work order from Punjab State Power Corporation Limited (hereinafter called 'PSPCL') and Punjab State Transmission Corporation Limited (hereinafter called as 'PSTCL'). The scope of work as averred, was to do the business of installation of transmission line, erecting of towers sagging and its survey etc. on behalf of PSPCL and PSTCL. In Para-5 of the writ petition it has been further averred that the petitioner filed regular VAT returns i.e. for the financial year 2009-10 till financial year 2016-17 (eight years). It is further the case of the petitioner that under the Punjab Value Added Tax Act, 2005 (hereinafter called as 'Act'), the 'Contractee' (in the present case respondents No.5 & 6 namely PSPCL and PSTCL) shall at the time of making payment of the contractor (petitioner), deduct the amount approximately equal to 6% of such amount, towards the tax payable under the 'Act', on the transfer of property in goods. The case of the petitioner is that respondents No.5 & 6 i.e. PSPCL and PSTCL, deducted VAT from the payment of 'job work' (Labour Work) done by the contractor. It is the case of the petitioner that as per the provisions of VAT Act 2005, the VAT is to be deducted on the

material supplied only and not on labour work done, but the above concerned departments kept on deducting the VAT on the whole bill payment amount. Respondents No.5 & 6 i.e. PSPCL and PSTCL deposited the TDS (tax) to the tax departments i.e. respondents No.2 & 3. Therefore, the excess amount, which is deducted as VAT on the entire bill amount in excess of the material supplied is liable to be refunded to the petitioner-Firm. Still further, it is the case of the petitioner that after deducting the VAT and other taxes, the remaining refund amount for eight years comes around Rs.3,06,20,124/ (Rupees Three crore six lacs twenty thousand one hundred and twenty four only), which the petitioner claims, be refunded without any further delay.

5. In the short reply filed on behalf of respondents No.1 to 4, the factual position submitted above, has not been disputed. In the reply, it has been averred that it is not contested that the petitioner, in compliance to the provisions of PVAT Act, 2005, has filed his periodical returns and annual statements for the years 2009-10 to 2016-17 till 30.06.2017. In order to grant of refund of tax, the answering respondents have to verify, if tax was actually deposited by respondents No.5 & 6 with the department or not. It is the averment made by the State that in order to enable the department to verify the above, the petitioner has to submit TDS certificates with the department but it is alleged that the petitioner has not been doing so within time, because of which, finalization of assesments got delayed.

In the affidavit dated 05.11.2019 on behalf of respondents No.1 to 4, it has been then averred that the department has now finalized the assessments for the years 2009-10 to 2013-14. It is stated that the assessments for the remaining years upto 2016-17 stands initiated and will be completed within due time on production of necessary documents by the petitioner. There is a chart giving latest position of the assessments given in Para-5 of the reply, which is reproduced herein below:-

Sr. No.	***Assessment year***	***Status of the case***	***Latest position***	***Time period within which the same will be completed***
1	2009-10	Assessed	Assessed vide order dated 18.11.2016	-
2	2010-11	Assessed	Remand case Now assessed vide order dated 04.11.2019	-
3	2011-12	Assessed	Assessed vide order dated 10.11.2018	-
4	2012-13	Assessed	Assessed vide order dated 04.11.2019	-
5	2013-14	Assessed	Assessed vide order dated 04.11.2019	-
6	2014-15	Initiated	To be finalized by 31.12.2019	Notice issued and served. Now fixed for 18.11.2019
7	2015-16 to 2016-17	Initiated	To be finalized by 31.12.2019	Notice issued and served. Now fixed for 18.11.2019

6. From the chart reproduced above, it is evident that assessments for the years 2009 till 2014 i.e. five assessment years, have been finalized vide various orders, three of which are dated 04.11.2019. It has further been averred in the chart that for the remaining two years i.e. 2014-15 and 2015-16, the assessment orders are likely to be finalized by 31.12.2019. Still further, it has been averred that notice has been issued and served upon the respondents to fix the hearing for 18.11.2019, for finalization of the above assessments of two financial years.

7. Mr. Pankaj Gupta, Addl. A.G., Punjab appearing on behalf of respondents No.1 to 4 has thus, summed up to say that firstly in pursuance to the assessment orders already passed for the five assessment years, wherefrom, refund was due and payable to the petitioner, the same has been ordered to be refunded to the petitioner. Secondly, qua the two remaining financial years namely 2014-15 and 2015-16, the assessment proceedings are likely to be finalized by 31.12.2019. He has further fairly contended that on the finalization of the said proceedings, the appropriate orders regarding refund or otherwise shall be passed in accordance with law. Thirdly, it has been further contended by learned State counsel that if still, the petitioner has any grievance left, assessment orders (passed qua each financial year) are appealable under Section 62 of the PVAT Act 2005.

8. The instant writ petition is disposed of with following directions:-

(i) Respondents No.1 to 4 are directed to ensure that the amount so ordered to be refunded to the petitioner in the assessment orders for assessment years 2009-10 upto 2013-14, be released forthwith, maximum within three weeks from the date of receipt of certified copy of this order by the respondents.

(ii) Respondents No.1 to 4 especially the Assessing Officer/Competent Authority concerned, is further directed to ensure that the assessment proceedings are finalized on or before 31.12.2019 for the assessment years 2014-15 and 2015-16.

(iii)Respondents No.1 to 4 are directed to ensure that in the event of orders of refund qua the Assessment Year 2014-15, 2015-16, the amount so ordered, be refunded to the petitioner within three weeks of the passing of the assessment orders

(iv) if the petitioner has any grievance, liberty is granted to it to file an appeal under Section 62 of the PVAT Act, 2005.

(iv) The petitioner is directed to co-operate with the authorities in finalization of the assessment proceedings for the years 2014-15 and 2015-16, by not only being present on 18.11.2019 (the date fixed for the same), but also to supply desired documents required for verification by the Assessing Officer.

9. No order as to costs.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

05.11.2019
anju rani

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