**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP 9791/2018
Date of decision:16.12.2019

M/s Awla Infra
..............Petitioner

v.

Commissioner of Central Tax Excise (Appeals) and others

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Sant Parkash

Present:- Mr.BS Jaswal,Advocate for the petitioner.

Mr.Sourabh Goel,Sr.Standing Counsel for CBIC/ respondents 1 to 3.

Mr.Deepak Balyan,Advocate for respondents 4 and 5.

Mr.Sandeep Goyal,Advocate for respondents 6 and 7 in CWP 9791/2018.

Mr.Sumit Jain,Advocate for respondents 6 and 7 in both petitions.

Jaswant Singh,J(Oral).

This order shall dispose of *2 writ petitions, detailed in the footnote of this order, as the parties, the issue involved and relief claimed is similar. However, facts are being noticed in CWP No.9791 of 2018.

Petitioner, a partnership firm is owner of a Godown let out to HAFED, for the purpose of storage of foodgrains. HAFED while tendering the rent for the relevant periods had deducted Service Tax, which was concededly deposited with the Tax Authorities. Subsequently, it was found that the said rented premises being used for agriculture purpose was exempt from payment of Service Tax. HAFED-tenant,on such a premise had retained the lease amount to be paid to the petitioner firm equivalent to the Service Tax paid to the Tax Authorities. The petitioner firm having deposited the tax filed a claim for refund, which has been dismissed on the ground of limitation. On 4.7.2019, counsel for HAFED- respondents 4 and 5 prayed for time to seek instructions.

During the course of hearing on 29.8.2019, it emerged that wrongly paid Service Tax could only be refunded to FCI upon showing that the burden was not passed on to the consumer i.e. Department of Food and Supplies; and that HAFED would have to release the withheld amount equal to the service tax element incorrectly paid with the Tax Authorities. Accordingly, Mr.Sourabh Goyal, Counsel for the Revenue was directed to work out the mechanism for refund of aforesaid amount from one government institution to the other. Simultaneously while directing FCI/HAFED to bring the withheld lease amount, the matter was adjourned to 24.9.2019.

On 24.9.2019, Mr. Sourabh Goyal, learned counsel for Revenue upon instructions stated that in case FCI moved an application for refund of the service tax,wrongly deposited with the Tax Authorities and showed that burden has not been passed on, the said claim shall be decided within two months of such application/request in accordance with law.

As regards,payment of lease money to the petitioner-landlord, counsel for FCI/HAFED stated that the same shall be paid before next date of hearing. In view of attempted resolution in exercise of the extraordinary jurisdiction of this Court, it was made clear that none of the parties shall be entitled to interest element on any of the amounts due. The matter was adjourned for today.

At the time of hearing today, learned counsel for the Revenue has produced a copy of letter dated 13.12.2019 written by Assistant Commissioner, Govt. of India, Ministry of Finance,Department of Revenue and addressed to Deputy

Commissioner (Law)CGST Commissionerate, Rohtak stating therein that in terms of the order dated 24.9.2019 passed by this Court, refund claim submitted by the FCI was examined and thereafter cheque No.651380 dated 13.12.2019 amounting to Rs.2,58,19,711/- favouring FCI,Hisar was handed over to the representative of FCI Hisar. It is further stated therein that since refund claim of Rs.85,04,673/- claimed by the party in the refund application was not proper and correct, a show cause notice dated 13.12.2019 has also been issued to FCI.

Further, learned counsel for the petitioner concedes that in terms of the order dated 24.9.2019 passed by this Court, petitioner-landlord has been paid due amount by HAFED, which was released by the competent n authority through FCI to the tenant-HAFED.

In this view of the matter, counsel for the parties are *ad idem* that the instant writ petition has become infructuous.

Disposed of as having become infructuous.

(Jaswant Singh)
Judge

16.12.2019. **(Sant Parkash)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**

***1.CWP 9791/2018 (M/s Awla Infra v Commissioner of Central Tax Excise(Appeals) and others.**

2. CWP 9826/2018 (M/s Awla Infra v Commissioner of Central Tax Excise(Appeals) and others