IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **Civil Writ Petition No. 4385 of 2018 (O&M)**
Date of Decision: 22.07.2019

M/s. Lajpat Rai Channa through its partner
Shri Lajpat Rai Chanana, Hisar (Haryana)

.... Petitioner

Versus

State of Haryana and others

.... Respondents

(2) **Civil Writ Petition No. 4395 of 2018 (O&M)**

Suresh Kumar Gupta, Kaithal (Haryana)

.... Petitioner

Versus

State of Haryana and others

.... Respondents

(3) **Civil Writ Petition No. 4410 of 2018 (O&M)**

M/s. Sharavan Kumar Gupta through its partner
Shadi Ram Mittal, Ambala City

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ramesh Kumar Jha, Advocate
for the petitioner(s) (in all cases).

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana
for respondent No. 1/State (in all cases).

Mr. Satish Singla, Advocate for
Mr. Vishal Garg, Advocate
for respondent Nos. 2 & 3-Housing Board, Haryana
(in CWP No. 4385 of 2018).

Mr. Deepak Manchanda, Advocate
for respondent Nos. 2 & 3-Housing Board, Haryana
(in CWP Nos. 4395 & 4410 of 2018).

Mr. Sourabh Goel, Central Govt. Standing Counsel,
for respondent No. 4-UOI (in all cases).

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JASWANT SINGH, J. (ORAL)

This common order will dispose of the above-mentioned three writ petitions bearing *CWP Nos. 4385, 4395 & 4410 of 2018*, as the issues raised in these petitions are identical. In all these petitions, the petitioners are seeking a *Mandamus* directing respondent Nos. 2 & 3-Housing Board, Haryana (in short "The HBH") for refunding of service tax with compound interest, deducted from the running and final bill of the petitioner-Contractor. For the facility of reference, facts are being culled out from CWP No. 4385 of 2018.

The petitioner, a partnership firm and registered with the Service Tax Department, had executed works towards construction of flats for the Economically Weaker Sections (EWS) under a Scheme floated by "The HBH" in the year 2014. "The HBH", while clearing the bills of payment for the works undertaken, had deducted at source the element of service tax and concededly deposited with the tax authorities.

It transpires that a Division Bench of this Court in CWP No 12304 of 2015 titled *"M/s. Bharat Bushan Gupta & Company Versus State of Haryana and others"* vide judgment dated 11.08.2016 held that on the contract for construction of Below Poverty Line/Economically Weaker Sections house/flats, as awarded by the Board to the petitioner(s), they were not liable to pay service tax w.e.f 01.07.2012 on account of Exemption Notification dated 20.06.2012 issued under the Finance Act. It was further held that "The HBH" was not entitled to pass on the burden of the service tax payable on its part, even in cases where the tax was leviable upon the contractors.

The petitioner-firm is stated to have made an application for refund of the service tax, inadvertently paid to "The HBH" and deposited before the tax authorities, which was rejected by the adjudicating authority vide order in original dated 21.09.2016. The petitioner-firm is stated to have filed an appeal, which was also dismissed by the Commissioner Appeals vide order dated 17.08.2017 by observing that there was no material on record to establish that the appellant-firm (petitioner) through "The HBH" had actually or not passed on the burden on to the ultimate consumers/allottees of the flats, however, liberty was granted to "The HBH" to file refund claims with proper documents and material.

It appears that without first approaching the Customs, Excise and Service Tax Appellate Tribunal, the petitioner straightway filed the present writ petition seeking quashing of the orders and a mandamus for refund of the service tax deposited by the Housing Board.

This Court vide order dated 07.03.2019 passed the following order:-

> *" Learned counsel for respondent No.4 has placed on record the communication dated 05.03.2019 received from the Office of the Commissioner of Central Taxes (GST & CE), Panchkula intimating that Union of India has verified the deposit of service tax made by the petitioner. The same is taken on record. Office to tag the same at appropriate place. A copy thereof has been supplied to counsel opposite(s).*
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> *Learned counsel the respondents-Housing Board submitted that earlier application had been filed with respondent No.4, but the same was returned as per Annexure R-2 dated 03.05.2017.*

It was stated by learned counsel for respondent No.4-Union of India that in case fresh application is filed by the Housing Board, Haryana, the same shall be decided expeditiously. Accordingly, it is directed that the Housing Board, Haryana shall file application for claiming refund of the service tax collected from the petitioner, in view of the communication dated 05.03.2019 (placed on record today). In case, such a refund application is filed within one month, the same shall be decided by the Union of India within next one month after affording an opportunity by passing a speaking order. However, it is clarified that in case the application is decided in favour of the Housing Board, Haryana, the amount of service tax refunded to the housing board by Union of India shall be paid to the petitioner by the Housing Board-respondent No.3.

Adjourned to 15.05.2019.

A photocopy of this order be placed on the files of other connected cases."

It is apparent that as a measure of equity, "The HBH" was permitted to make an application for refund of service tax to be ultimately disbursed to the petitioner(s)-firm(s), in case it was found that the incidence had not been passed on. Subsequently, the tax authority/respondent No. 4 moved an application bearing *CM No. 7904 of 2019*, wherein the following order was passed on 30.05.2019:-

" Respondent No. 4-Union of India has instituted the aforesaid application seeking modification of the order dated 7.3.2019, whereby the Housing Board was directed to make an application for claiming refund of service tax collected from the petitioner/contractor and deposited by the Housing Board with the Tax Authorities.

Counsel for the applicant/respondent no.4-Union of India submits that as per the procedure followed in the previous cases on the directions of this Court, it is the contractor/petitioner who is required to make an appropriate application for claiming the refund of service tax deposited instead of the Housing Board. Thus, he submits that inadvertent mistake has occurred in the order, thereby necessitating the *present application.*

Upon notice to the counsel for the contractor/petitioner, Mr. Ramesh Kumar, Advocate has put in appearance.

After hearing counsel for the parties, order dated 7.3.2019 is hereby modified to the extent that it will be petitioner-contractor who wile file a fresh application claiming refund of service tax collected from him and deposited by the Housing Board with the Tax Authorities within three weeks from today and the same shall be considered by the authorities concerned within next one month and release the admissible/due refund in accordance with law.

Allowed in the above terms."

At the time of resumed hearing today, counsel for the petitioner(s) states that an order dated 11.07.2019 has been passed by the Assistant Commissioner, Goods and Service Tax Division, Hisar, whereby the total amount deducted i.e. ₹ 19,48,553/- (in CWP No. 4385 of 2018) by "The HBH" and deposited with the Tax Authorities stands sanctioned in favour the petitioner-firm towards full and final settlement of the claim as per the aforesaid order dated 30.05.2019 passed by this Court. Although the petitioner may have a right to raise the issue of award of interest, however, we are not inclined to entertain such a plea in writ jurisdiction keeping in view the balance of equities and the peculiar circumstances of this case, as also the graceful approach of the Tax Authorities in not adhering to strict compliance of the statutory provisions.

All the petitions are **disposed of as infructuous**.

(JASWANT SINGH)
JUDGE

July 22, 2019 **(LALIT BATRA)**
'dk kamra' **JUDGE**

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