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

**CWP No.11262 of 2020 (O&M)
Date of Decision:25.02.2021**

ASI Industries Limited

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Ms. Vanita Bhargava, Advocate
for the applicant-petitioner.

Ms.Shruti Jain Goyal, DAG, Haryana
for respondents No.1 to 3.

Mr. Sandeep Goyal, Advocate
for respondents No.4 and 5.

SANT PARKASH, J.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

CM-560-2021

Prayer in the application is for placing on record rejoinder by way of affidavit of the petitioner to the reply filed on behalf of respondents No.1 to 3.

Application is allowed, as prayed for. Rejoinder is taken on record.

CM-1743-2021

Application is allowed. The affidavit on behalf of respondents No.4 and 5 is taken on record, in terms of order dated 12.01.2021 passed by this Court.

Main case

The present writ petition is directed against the order dated 02.07.2020 **(P-1)** passed by Deputy Commissioner (Excise & Taxation), Panipat, Haryana (respondent No.3 herein), whereby representation dated 12.03.2020 **(P-11)** of the petitioner for refund of excess tax borne by it was rejected.

Brief facts of the case are that the Petitioner is a Company engaged in the mining of Kotah stone in the State of Rajasthan. The Petitioner / Company is duly registered under the Central Sales Tax Act, 1956 (for short 'CST Act'). The petitioner required High Speed Diesel (HSD) for the purpose of operating earth-moving equipments at mines and for running diesel generating sets. It purchased HSD from the Indian Oil Corporation (IOC) located in the State of Haryana, being a dealer registered under the Central Sales Tax Act. Prior to the introduction of the Goods and Service Tax (GST), the authorities of the State of Rajasthan under the CST Act duly issued C-Form declarations to the Petitioner / Company enabling it to purchase HSD at concessional rate of tax from the Seller. Till 01.07.2017, C-Forms were being issued by the State of Rajasthan and the goods were being purchased at the concessional rate. On 01.07.2017, the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') was enacted. The petitioner had to switch over its registration as a dealer under the CGST Act. The CGST Act governed all goods and services except six specified items viz., crude oil, petrol, diesel, aviation turbine fuel, natural gas and alcoholic liquor. These six commodities continued to be governed by the respective State Value Added Tax laws within the State as well as the

CST Act insofar as the inter-state transactions are concerned. However, the State of Rajasthan refused to issue C-Form declarations for purchase of HSD at concessional rate despite the fact that the above-said commodities are governed by the respective State Value Added Tax laws. In absence of C-form, the petitioner had to purchase HSD after payment of a higher rate of tax during the period October 2017 to March 2018. On account of this, the petitioner paid an excess tax amounting to Rs.93,72,244/-.

To seek refund of the aforesaid amount, the Petitioner/ Company approached the Rajasthan High Court by way of a writ petition bearing CWP No.5475 of 2018. The said writ petition was allowed by the Rajasthan High Court vide order dated 28.09.2018 **(P-5)** by placing reliance on a judgment of its own Court rendered in **CWP No.5506 of 2018 (Hindustan Zinc Limited Vs The State of Rajasthan and others)**. Feeling aggrieved from the said order, the State of Rajasthan preferred an *intra court* appeal, which was dismissed vide order dated 16.07.2019 **(P-7)**. The said decision was further upheld by the Hon'ble Supreme Court vide order dated 03.02.2020 **(P-9).** Subsequently, C-Forms were issued by the State of Rajasthan to the petitioner company. In the meanwhile, Indian Oil Corporation vide its letter dated 09.10.2019 informed the Petitioner/ Company that since it had deposited the tax with the Haryana Sales Tax Department, it should approach the concerned Department for refund of tax paid by the Petitioner / Company.

Pursuant to the above, the Petitioner / Company approached the concerned respondent authorities, i.e. Deputy Commissioner (Excise and Taxation), Panipat, Haryana vide its letter dated 12.03.2020 **(P-11)** for claiming refund of the excess CST paid by it on purchase of HSD for the financial year 2017-18. Since, no response was received, the Petitioner / Company preferred CWP No.7596 of 2020, which was disposed of by this Court vide order dated 01.06.2020 **(P-13)**, directing respondent No.3-Deputy Commissioner (Excise and Taxation), Panipat to consider and decide the representation of the petitioner within six weeks from the date of receipt of certified copy of the judgment. Accordingly, the matter was considered and claim of the petitioner has been rejected by respondent No.3-Deputy Excise and Taxation Commissioner (ST), Panipat vide order dated 02.07.2020 **(P-1)**, *inter alia*, on the ground that the excess tax can be refunded only to those from whom it was charged as per the provisions of Haryana Value Added Tax, 2003 (for short 'HVAT Act').

Hence, the present writ petition.

Learned counsel for the petitioner submits that respondent No.3 has committed a serious error by applying the refund provisions of the HVAT Act to the present transaction which is admittedly governed by the CST Act. He further submits that in view of provisions of sub-section 5 to Section 20 of the HVAT Act, any aggrieved person can seek refund by establishing the case for refund. To support his contentions, she places reliance on a judgment of this Court delivered in **Carpo Power Limited Vs. State of Haryana and others, 2018 (2) GSTL 248** as well as a Division Bench judgment of Gujarat High Court rendered in **J.K.Cement Ltd. Vs State of Gujarat (R/Special Civil Application No.15333 of 2019)**. Lastly, she prays for allowing the present writ petition.

On the other hand, learned counsel for respondents No. 1 to 3 as well as respondents No.4 and 5 submit that respondent No.3 has rightly disposed of the representation dated 12.03.2020 by passing a speaking order dated 02.07.2020 within the legal parameters as contained under Section 20 (1) and (7) of the HVAT Act. They pray for dismissal of the instant writ petition.

This Court has heard the learned counsel for the parties and perused the case file.

Before proceeding in the matter, it is apt to refer to Section 20(5) as well as Section 20(1) and (7) of the HVAT Act. It is apt to notice that issues relating to refund of CST are governed by provisions of State VAT Acts. Section 20(5) of the HVAT Act reads as under:-

> *"20(5) Any amount refundable to any person as a result of an order passed by any court, appellate authority or revising authority, shall be refunded to him on an application containing the prescribed particulars accompanied with the prescribed documents made in the prescribed manner to the prescribed authority."*

Section 20(1) and (7) of the HVAT reads as under:-

> ***"(1)*** *If any person has charged any amount purported to be tax in excess of the tax leviable, no order allowing refund of the excess amount shall be passed in his favour by any authority under this Act or by any court unless he refunds such amount to those from whom it was charged, and where charged, and where from a VAT dealer, the input tax shall be duly adjusted.*
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> *XXX XXX XXX XXX*
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> ***(7)*** *Before any refund is given to any person under this Act it shall be first adjusted with any amount due from him under this*

Act or the Central Act for any period and the balance, if any, only shall be refunded to him."

It is not disputed that the Petitioner / Company purchased high speed diesel from the Indian Oil Corporation for Rs.6,15,78,478.60/- during the period from October 2017 to March 2018 on full rate of CST, i.e. 17.22% amounting to Rs.1,06,03,813.99/- as the Commercial Tax Department, Rajasthan refused to issue C-Form declarations, despite the fact that diesel continued to come within the ambit of the CST Act after 01.07.2017. It is pertinent to note that if the C Forms had been issued, concessional CST @ 2% amounting to Rs.12,31,569.57/- would have been charged. The grievance of the petitioner is that it has borne the burden of the excess tax payable amounting to Rs.93,72,244.42/- The petitioner sent a representation dated 12.03.2020 **(P-11)** to the Deputy Commissioner (Excise and Taxation), Panipat, Haryana, being the jurisdictional authority of the Seller under the CST Act for refund of Rs.93,72,244.42/- towards differential CST amount excess deposited by the seller. In support of its claim, the Petitioner / Company also furnished quarterly bill wise summary showing the basic value, CST charged at full rate, concessional CST to be charged @ 2 percent etc. However, when no response was given by the concerned Department, the Petitioner / Company preferred a writ petition before this Court, which was disposed of vide order dated 01.06.2020 **(P-13)**, directing respondent No.3 to consider and decide the said representation dated 12.03.2020. In compliance of the order of this Court, respondent No.3 considered and rejected the representation of the Petitioner / Company vide order dated 02.07.2020 **(P-1)** on the ground that the excess tax can be refunded only to those from whom it was charged as per the Section 20 (1) and (7) of HVAT Act.

The main argument of learned counsel for the petitioner is that in view of provisions of Section 20 (5) of the HVAT Act, any aggrieved person can seek refund by establishing the case for refund.

It is not disputed that the Petitioner / Company has furnished proof of bearing the burden of the excess tax to the respondent authorities. The stand taken by the respondent authorities while rejecting the representation of the Petitioner/ Company is that the excess tax can be refunded only to those from whom it was charged as per as per the Section 20 (1) and (7) of HVAT Act. A similar controversy came up for consideration before this Court in the case of **Carpo Power Limited** (supra) as also before Gujarat High Court in **J.K.Cement's** case (supra), wherein a number of judgments of the Hon'ble Supreme Court have been discussed. The relevant observations recorded in **J.K. Cement's** case (supra) read as under:-

> *"19. In the opinion of this court, in the light of the clear directions issued by the Rajasthan High Court in the judgment and order referred to hereinabove, which the respondent authorities are bound to comply with, upon the petitioners making applications for refund along with the requisite documents, the respondents were duty bound to process such claim within a period of twelve weeks from the date of such application. The stand adopted by the respondents that the refund can be made to only to Reliance Industries Limited flies in the face of the order passed by the Rajasthan High Court as well as the above-referred decisions on which reliance has been placed by the learned advocate for the petitioners and is*

nothing but a purely hyper technical stand adopted by them. Once Reliance Industries Limited has, in clear terms, written to the authorities that various buyers who have purchased HSD in the course of inter-state trade for use in mining activities will be approaching their office for refund of the differential tax amount and has enclosed therewith Customer-wise details of inter-state sales made to buyers in Rajasthan at full rate, it is evident that Reliance Industries Limited is not disputing the fact that it is the petitioners who are entitled to claim the refund. Under the circumstances, the respondent authorities are not justified in not processing the refund claims of the petitioners.

20. In case of the petitioners, it is an admitted position that the HSD has been purchased by them from Reliance Industries Limited in the course of inter-State trade for use in mining activities and they are, therefore, the ultimate consumers thereof and hence, the question of passing on the tax burden to anyone would not arise. Consequently, the question of unjust enrichment would also not arise."

From the reading of the above-said judgment, it can be safely concluded that the HSD has been purchased by the Petitioner/ Company from Indian Oil Corporation in the course of inter-State trade for use in mining activities and therefore, the question of passing of the tax burden to anyone would not arise and the respondent authorities are not justified in not processing the refund claims of the Petitioner / Company.

In view of the above-said discussions, the present writ petition is allowed. The respondents are directed to process the refund claim of the petitioner and grant refund of the tax amount collected from the petitioner and deposited by the seller, in accordance with law within a period of four **(04)** weeks from the date of receipt of certified copy of this judgment.

However, it is made clear that once the refund claim of the petitioner is processed, Indian Oil Corporation would not be entitled to claim any such refund.

(JASWANT SINGH) **JUDGE**	**(SANT PARKASH)** **JUDGE**

25.02.2021
mks

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