

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7927-2020

Date of decision: 01.04.2022

Vijendra Stores

.... Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sandeep Goyal, Advocate,
Mr. Rishab Singla, Advocate and
Mr. Nitish Bansal, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

PANKAJ JAIN, J.

By way of present writ petition, the petitioner prays for grant of a writ in the nature of certiorari for quashing order dated 15/19.05.2020 (Annexure P-10) passed by respondent No.2 withholding refund of Rs.2,10,58,992/- payable to the petitioner on the basis of order passed by revisional authority dated 30.05.2016 (Annexure P-4).

2. Petitioner further seeks issuance of a writ in the nature of mandamus for direction to the respondents to release the aforesaid refund.

3. Petitioner an assessee registered with Assessing Authority, Yamuna Nagar under Haryana VAT Act, 2003 (hereinafter referred to as '2003 Act') filed its return for the assessment year 2013-14 as per the provisions of 2003 Act. The returns filed by the petitioner for the said assessment year were taken up for scrutiny and assessment proceedings were initiated.

4. Vide order dated 29.12.2014 (Annexure P-1), the petitioner was held entitled for Rs.2,10,58,992/- as excess tax refundable on application. The said refund was approved by Deputy Excise and Taxation Commissioner (ST), Jagadhri vide letter dated 19.03.2015 (Annexure P-2).

5. After the authorities failed to refund the amount, petitioner approached this Court by way of CWP-2790-2016. On notice, the respondents stated that the petitioner has been issued notice of revision of assessment order by Deputy Excise and Taxation Commissioner (ST), Yamuna Nagar and thus he is not entitled for refund at this stage.

6. Initiation of revisional proceedings was again challenged by the petitioner by way of CWP-6586-2016. During pendency of the said writ petition, the revisional order was passed on 30.05.2016 (Annexure P-4). The assessment order was revised and a demand of Rs.1,45,66,070/- was raised.

7. Haryana Tax Tribunal being not functional, the petitioner yet again approached this Court by way of CWP-14413-2016 challenging the revisional order. The said writ petition was disposed of vide order dated 08.03.2017 (Annexure P-6), whereby the petitioner was relegated to the alternative remedy of appeal. In appeal preferred by the petitioner by the Haryana Tax Tribunal, the revisional order was quashed and the assessment order dated 29.12.2014 (Annexure P-1) was maintained. Thus, holding the petitioner entitled to refund of Rs.2,10,58,992/-.

8. On the basis of the order passed by the Tribunal dated 28.05.2019, petitioner applied for refund vide application dated

08.08.2019 (Annexure P-8). After respondent authority failed to respond, the petitioner again approached this Court by way of CWP-4094-2020, seeking writ of mandamus directing the respondents to pay the refund. After notice of motion was issued on the aforesaid writ petition, order dated 15/19.05.2020 was passed which has now been impugned in the present writ petition. While assailing the aforesaid order dated 15/19.05.2020, counsel for the petitioner submits that the order passed under Section 21 of 2003 Act, is illegal as the same does not satisfy the conditions required to be fulfilled for exercising power under the said provision. It has been asserted that the impugned order being against the bare provision of law deserves to be set aside.

9. Per contra, learned State counsel has argued that since the order dated 28.05.2019 (Annexure P-7) passed by Haryana Tax Tribunal, Chandigarh prejudicial to the interest of revenue and the department was in process of filing review/appeal, the taxing authority had rightly recommended to withhold the refund to the Commissioner, who is competent authority as per provision of Section 21 of 2003 Act. No fault can be found with the impugned order as the competent authority has withheld the refund in the interest of the State revenue as per provisions of law. It has been submitted that DETC, Jagadhri vide letter dated 28.08.2019 recommended to the Excise and Taxation Commissioner, Haryana for withholding refund. Approval for withholding the refund was accorded by the competent authority on file on 25.09.2019, but inadvertently the order could not be conveyed to the relevant authority within the stipulated period of 90 days and thus, the delay cannot be taken as a ground to challenge the impugned order. She further contends

that the Tribunal ignored material facts in allowing the appeal filed by the petitioner, thus the authorities filed review application against the order passed by Haryana Tax Tribunal on 16.12.2019. However, since the Haryana Tax Tribunal is not functional, the same could not be listed.

10. We have heard counsel for the parties and have carefully perused the record. The facts of the present case are not in dispute. In our considered opinion, in the given facts and circumstances, the question arises as to whether impugned order Annexure P-10 is inconsonance with the provisions of the Act or not?

11. Sections 20 and 21 of 2003 Act deal with refund and power to withhold refunds and the same reads as under:-

“20. Refund

(1) If any person has charged any amount purposed 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 charged from a VAT dealer, the input tax shall be duly adjusted.

(2) No refund of input tax shall be admissible to a VAT dealer except-

(a) in respect of input tax relating to the goods which have been sold in the course of export of goods out of the territory of India or have been used in manufacture and the manufactured goods have been sold in the course of export of goods out of the territory of India, in full; and

(b) in respect of input tax relating to the goods which have been sold in the State or in

the course of inter-State trade or commerce or have been used in manufacture and the manufactured goods have been sold in the State or in the course of inter-State trade or commerce, only to the extent of such input tax exceeding the tax including the central sales tax calculated on sale of goods on account of difference in rate of tax between the input tax and the tax calculated on sales, and the balance input tax after reducing therefrom the tax including the central sale tax levied on the sale or purchase of goods, as the case may be, shall be carried over for adjustment with future tax liability.

(3) A VAT dealer may seek refund by making an application containing the prescribed particulars accompanied with the prescribed documents in the prescribed manner to the assessing authority who shall, after examination of the application, allow provisionally refund to the dealer.

(4) Where the assessing authority finds on assessment of a dealer that he has paid any amount in excess of tax, interest or penalty assessed or imposed on him under this Act, it shall allow refund of the excess amount or allow the same to be carried forward for adjustment with future tax liability, as the case may be.

(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.

(6) The amount refundable under the foregoing

provisions of this section to any person shall be subject to the approval in the prescribed manner of the prescribed authority who may, by order in writing passed after providing opportunity of being heard to the affected person, change the amount of refund or order that no refund is due.

(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.

(8) Any amount ultimately found due to any person, which he paid as a result of an order passed under this Act, shall be refunded to him with simple interest at the rate of one per cent per month for the period from the date of payment to the date when refund is given to him.

(9) Any amount, not falling within sub-section (8), refunded after a period of sixty days from the date of making an application under sub-section (5) shall carry with it simple interest at the rate of one per cent per month for the period from the date of making the application to the date when the refund is made.

(10) Any amount due to a dealer under sub-section (4) but not refunded to him within sixty days from the date of passing the order allowing the refund, shall carry with it simple interest at the rate of one per cent per month for the period from the date of passing the order allowing the refund to the date when the refund is made.

(11) Where any question arises as to any period to be excluded for the purposes of calculation of interest payable under sub-section (9) or sub-section (10) because the delay for the period in question has been due to the fault of the assessee entitled to the refund,

such question shall, after giving the assessee a reasonable opportunity of being heard, be determined by the Commissioner by an order in writing.

21. Power to withhold refund

(1) Where an order giving rise to a refund is the subject matter of further proceedings and the taxing authority interested in the success of such proceedings is of the opinion that the grant of the refund is likely to adversely affect the recovery in the event of success of such proceedings, he may, for reasons to be recorded in writing, withhold the refund and shall, if such authority is below the rank of Commissioner, refer the case, within thirty days of the application for the refund, to the Commissioner for order.

(2) If a reference has been made to the Commissioner under sub-section (1) in time, he may either pass an order withholding refund or direct that refund be made on furnishing of security except cash security of the like amount or decline to withhold the refund.

Provided that if no order withholding the refund is received within ninety days of making the reference to the Commissioner, the refund shall be given forthwith.”

12. Section 20(5) of 2003 Act mandates that 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 made in the prescribed manner. Section 21 prescribes the power to withhold refund to which an assessee claims himself to be entitled under Section 20. Section 21 clothes the competent authority with the power to withhold the refunds. However the same can be

exercised only where an order giving rise to refund is subject matter of further proceedings and the taxing authority interested in the success of such proceedings is of the opinion that the grant of refund is likely to adversely affect the recovery in the event of success of such proceedings. Section 21(2) further provides that on reference made under Sub-Section (1), the Commissioner has power to withhold refund or to direct the refund on furnishing of security as prescribed. Proviso to Section 21(2) provides that where a reference has been made to the Commissioner and no order withholding the refund is received within 90 days, the refund shall be given forthwith. In other words, the proviso arrests the power given to the Commissioner beyond 90 days.

13. Admittedly, in the present case, reference to the Commissioner for withholding the refund was made on 28.08.2019. On 28.08.2019, order passed by Tribunal i.e. the order giving rise to a refund was not subject matter of any further proceedings. So far as according of approval to withhold the refund by Commissioner on file is concerned, the same is inconsequential. From analysis of Section 21, one would infer that it confers power on Commissioner to pass an order withholding refund or allowing the refund on furnishing of security on satisfaction of the conditions enumerated under Section 21(2). Legislature was conscious of the fact that the power conferred to withhold refund in Section 21 is akin to exercising power to stay the money decree and thus, an option was given that the refund can be directed to be made on furnishing of security as the objective is to affect the recovery only. It goes without saying that any order passed to withhold the refund is prejudicial to the interest of assessee. Since the

provision itself provides that the Commissioner may pass an order withholding the refund or direct that refund be made on furnishing of security, the said power cannot be exercised mechanically. While exercising this power, the authority i.e. Commissioner has to act judicially and is required to give an opportunity to the assessee to make out case for refund or satisfy him by furnishing security. Thus, noting on file cannot be a substitute to an order required to be passed under the provisions of Section 21. Further impugned order Annexure P-10 is bereft of any reasoning. It is trite that mere reproduction of the words of statute cannot be construed as substitute for the reasons that an authority exercising statutory power is required to record.

14. Keeping in view the aforesaid facts, we find that the impugned order dated 15/19.05.2020 (Annexure P-10) passed by respondent No.2 i.e. Excise & Taxation Commissioner, Haryana withholding the refund of Rs.2,10,58,992/- is unsustainable being in teeth of provision of 2003 Act. The authorities are directed to issue refunds to the petitioner in terms of his application dated 08.08.2019 (Annexure P-8) as per law within a period of one month from the date of receipt of certified copy of this order.

15. Petition stands allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

01.04.2022

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes