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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13733 of 2021
Date of decision: 09.02.2022

M/s NCC Limited

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajiv Agnihotri, Advocate for the petitioner.

Ms. Shruti Jain Goyal, Dy. Advocate General, Haryana.

PANKAJ JAIN, J.

The petitioner has approached this Court impugning the order dated 22nd of February, 2021 passed by respondent No.3-Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Gurugram (East) whereby refund allowed by the Excise & Taxation Officer-cum-Assessing Authority, Gurugram (East)-respondent No.4 in his favour, has been disallowed.

2. The petitioner further prays for directions to the respondents to issue refund voucher of Rs.2,63,85,542/- along with interest for the assessment year 2017-18.

3. As per the petitioner he is engaged in construction work of various projects as a Contractor. Assessment for the assessment year 2012-13 was framed by the Assessing Authority allowing refund of

Rs.56,32,760/- vide order dated 15th of March, 2016 which on rectification further accumulated to Rs.65,48,587/-. Owing to certain adjustments of taxes, the aforesaid refund was reduced to Rs.1,64,64,571/- vide the assessment order for the assessment year 2013-14. As per the petitioner, for the assessment year 2014-15, refund of Rs.39,16,641/- was also allowed and the aforesaid amounts of Rs.1,64,64,571/- for the assessment year 2013-13 and that of Rs.39,16,641/- for the assessment year 2014-15, were carried forward to the assessment year 2015-16. For the assessment year 2015-16, amount of refund swelled to Rs.2,78,04,483/- and the said amount was further carried forward for the assessment year 2016-17. For the assessment year 2016-17 assessment was framed and Rs.2,67,24,795/- became due to the petitioner. The said amount was carried forward to the assessment year 2017-18 and on framing of assessment for the assessment year of 2017-18, a refund of Rs.2,63,85,542/- was determined as refund payable to the petitioner vide Annexure P-6 dated 8th January, 2020, however, the Revisional Authority after issuing Show Cause Notice to the petitioner, rejected the claim of refund vide order dated 22nd of February, 2021.

4. The case of the petitioner is that he never carried forward the said input tax credit to Tran1 as there was no excess for the assessment year 2017-18 but was carried forward from the previous assessment year 2016-17 only.

5. The respondents have filed written statement to the present Writ Petition admitting the factual aspect. However, the respondents have

supported the impugned order primarily relying upon Section 20(2)(a)(b)of the Haryana Value Added Tax Act, 2003 (for short, 'the Act') thereby justifying the denial of refund to the petitioner. Further, the respondents have asserted that the present writ petition is not maintainable in view of remedy of appeal available to the petitioner under Section 33 of the Act.

6. We have heard counsel for the parties and have carefully gone through the record.

7. Regarding the preliminary objection raised by the respondents with respect to the maintainability of the present writ petition in view of alternate remedy of appeal, it is an admitted position that though Section 33 of the Act provides for appeal but the same cannot be availed by the petitioner as the Haryana Tax Tribunal is presently not functional. Thus, we are constrained to interfere in the present *lis* exercising jurisdiction under Article 226 of the Constitution of India.

8. The short question that arises for the consideration of this Court is as to whether the Revisional Authority was justified in rejecting the claim of the petitioner relying upon Section 20(2)(a)(b) of the Act without taking into consideration Section 20(4) of the Act. Under the Act, Section 20 governs the claim of refund, which reads as under :-

> "***Section 20***. *(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 war 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 (50 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.*
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> *(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."*

9. On perusing the impugned order, we find that Revisional Authority has decided the issue in hand without resorting to Section 20(4) of the Act. No reason has been assigned by the Revisional Authority as to why the case of the petitioner will not fall within the ambit of Section 20(4) of the Act. The counsel for the respondents has failed to spell any reason as to why the case of the petitioner will not be covered under Section 20(4) of the Act. Once it is admitted that the Assessing Authority on assessment found that the petitioner has paid an amount in excess of tax, interest or penalty imposed on him, the case will be covered by Section 20(4) of the Act and not Section 20(2)(a)(b).

10. Consequently, the present writ petition is allowed. The order dated 22nd February, 2021 (Annexure P-12) passed by the Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Gurugram (East), is hereby set aside. The respondents are directed to issue refund of

Rs.2,63,85,542/- along with interest as contemplated under the law, within four weeks from the date of receipt of certified copy of this order.

11. Ordered accordingly.

(AJAY TEWARI)
JUDGE

February 09, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No