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

**CWP-20383-2020 (O&M)
Order Reserved on: 02.08.2022
Order Pronounced on:16.12.2022**

M/s Matrix Clothing Pvt. Ltd. .... Petitioner

versus

State of Haryana and others .... Respondents

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

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Present: Mr. Sandeep Goyal, Advocate,
Mr. Nitish Bansal, Advocate and
Ms. Vidisha Swarup, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

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<u>TEJINDER SINGH DHINDSA, J.</u> (ORAL)

Challenge in the instant petition is to the order dated 27.10.2020 (Annexure P-10) passed by the Excise and Taxation Officer-Cum-Assessing Authority, Sales Tax Office, Gurugram, Haryana whereby the refund application filed by the petitioner dated 14.06.2018 pertaining to assessment year 2014-15 stands rejected. Writ of mandamus is sought directing the respondents to grant refund along with interest.

As per pleadings on record petitioner is a dealer engaged in the business of manufacture of ready made garments out of which 90% of the goods are exported out of the country. For the purpose of sales tax in the

State of Haryana the petitioner stood registered with Assessing Authority, Gurugram vide TIN 06821919134. For the assessment year 2014-15 petitioner filed the quarterly returns as well as annual return in compliance with the provisions of the Haryana Value Added Tax Act, 2003 (hereinafter referred to as the '2003 Act'). The returns were taken up in scrutiny, assessment proceedings were initiated and assessment order dated 30.03.2018 (Annexure P-1) was passed whereby the Assessing Authority calculated an excess of Rs. 1,50,92,451/- under the '2003 Act' and raised demand of Rs. 12,28,065/- under the Central Sales Tax Act, 1956.

Petitioner thereafter filed a refund application dated 14.06.2018 for the year 2014-15 amounting to Rs.1,50,92,451/-. It is such refund application that stands rejected vide impugned order dated 27.10.2020 (Annexure P-10).

Learned counsel for the petitioner would argue that the impugned order is arbitrary as also contrary to the provisions of the '2003 Act' as also Rules framed thereunder. It is urged that respondent No.5 has carried forward excess of Rs. 1,50,92,451/- instead of refunding the same to the petitioner as the petitioner is an export unit and out of the total turn over, 90% of the goods are exported out of the country. Counsel submits that there would be no utilisation of the excess amount in the succeeding years and the retention of the amount with the department is without any valid reason. Reliance is placed upon a Division Bench judgment of this Court in **Haryana State Warehousing Corporation vs. Excise and Taxation Commissioner and another (2012) 42 PHT 390 (P&H)** to assert that once it has been found that the assessee has paid excess amount, he is entitled to refund thereof with statutory interest as an alternative to adjustment.

Yet another submission raised by counsel is that the impugned order passed by the respondent No.5 is without jurisdiction inasmuch as under Rule 42 of the Haryana Value Added Tax Rules, 2003, refund of an amount more than Rs. 10 lakhs is to be decided by a committee consisting of officer-in-charge of the range or any other committee constituted by the Commissioner. However, in the present case, it is submitted that the mandate of Rule 42 has been given a go-by and respondent No.5 has rejected the refund application by himself.

Per contra, Ms. Shruti Jain Goyal, learned DAG, Haryana has justified the passing of the impugned order by submitting that the petitioner had claimed only excess carried forward in his annual return in Form VAT R-2 and the same had been allowed in the assessment order. Once assessment has been finalised and order is served upon the assessee, the Assessing Authority has no power to change or alter such assessment. It has further been submitted that under Section 33 of the '2003 Act' the petitioner could have filed an appeal to the Joint Excise and Taxation Commissioner (Appeals) against the order of assessment and thereafter a remedy was also available before the Tax Tribunal, Haryana. Learned State counsel submits that the period of limitation for filing appeal against the order of the Assessing Authority also stood expired and the instant writ petition has been filed only to cover up delay. Dismissal of the writ petition is prayed for.

We have heard counsel for the parties at length and have perused the pleadings on record.

Section 20 of the '2003 Act' as also Rules 41 and 42 of the Haryana Value Added Tax Rules, 2003 would be relevant to the issue at hand and are reproduced herein for facilitation of ready reference:-

"HARYANA VAT ACT, 2003

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 subsection (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.

HARYANA VAT RULES 2003

41. Refund

(1) No amount representing input tax shall be refundable except in accordance with the provisions of sub-rules(2) and (3).

(2) Subject to the provisions of sub-rule (4), any amount representing input tax relating to the goods which have been sold in the course of export out of the territory of India, or which have been used in manufacturing and the manufactured goods have been sold in the course of export out of the territory of India, shall be refundable in full to the exporting dealer.

(3) Subject to the provisions of sub-rule(4), any amount representing input tax relating to the goods which or the goods manufactured from which have been sold in the State or in the course of inter-State trade and commerce shall be refundable to the extent the input tax exceeds the tax calculated on sales on account of difference in rates of tax at which the input tax has been calculated and the rates at which the tax on sales has been calculated.

Illustration.–

1. Input tax in respect of goods purchased by a VAT dealer D is Rs.10,000/-, D sells these goods in the course of export of goods out of the territory of India. D's liability to pay tax on account of sales made in the State and in the course of inter-State trade and commerce totals to Rs.8,000/-. D is entitled to a refund of Rs.2,000/-.

2. D purchases goods from VAT dealers in the State for Rs.1,00,000/-. D is charged to tax @10% on these sales. D sells these goods in the State to manufacturers for Rs.1,50,000/-against declarations charging tax @4%. D is entitled to a refund of Rs.4,000.

3. In illustration 2, if D sells goods at a loss in the course of inter-State trade for Rs.90,000/-against declarations in Central form C chargeable to tax @4%, D will be entitled to a refund of Rs.5,400/-and D can carry forward credit of Rs.1,000/-for adjustment with tax liability for the next quarter.

(4) While framing the assessment of a dealer for any period, the assessing authority shall, after such scrutiny of its record and the record maintained by the dealer and after making such enquiries as it considers necessary, determine the output tax, purchase tax, input tax and the amount of tax paid by the dealer for the assessment period. If the assessing authority finds that the sum of tax paid and input tax exceeds the sum of output tax and purchase tax, it shall determine the excess amount and from the excess amount it shall then deduct any amount due from the dealer, whether under the Act or the Central Act and it shall allow from the balance amount refund of the amount determined in accordance with the provisions of sub-rules (1), (2) and (3). If the balance amount falls short of the amount determined under sub-rules(1), (2) and (3), the refund shall be restricted to the balance amount otherwise it shall be allowed in full and the balance left thereafter, if any, shall be carried forward for adjustment with future tax liability. The assessing authority shall, in respect of the amount to be refunded to the dealer, issue to him at his option a refund payment order in form S.T.R.34 prescribed under the Punjab Subsidiary Treasury Rules or refund adjustment order in Form VAT-G9 and where it fails to do so within sixty days of the date of the assessment order allowing the refund, there shall be paid interest to the claimant at the rate of one per cent per month from the date of the order to the date when the refund payment order or refund adjustment order, as the case may be, is issued to him.

> *Illustration –D, a VAT dealer, is assessed to output tax, purchase tax and input tax at Rs.50,000/, nil and Rs.40,000 respectively. D paid Rs.32,000/-as tax. D sold goods in the course of export out of the territory of India for Rs.10,00,000/-. Input tax in respect of the goods exported is Rs.10,000/-. Nothing is due from D under the Act but Rs.8,000/-is due from him under the Central Act. D's refund claim of Rs.10,000/-is in order and he is further entitled to carry forward tax credit of Rs.4,000/-to next tax period.*

(5) Where a refund of any amount paid by any dealer or other person becomes payable as a result of the order of any appellate or revising authority or any court and the same is not the subject-

matter of any further proceedings, such dealer or such other person shall make an application to the officer incharge of the district concerned in case he is the owner of the goods in respect of which penalty imposed under sub-section (8) of section 31 has been quashed or reduced and in other cases to the assessing authority concerned, along with the original copy of the order which constitutes the basis for refund and the authority to whom the application is made shall order the refund of the excess amount in the manner specified in sub-rule(4) and where the said authority fails to do so within sixty days of the receipt of such application, there shall be paid interest to the claimant at the rate of one per cent per month from the date of making the application to the date when the refund payment order or refund adjustment order, as the case may be, is issued to him.

(6) A VAT dealer may on quarterly basis claim refund of input tax in the circumstances specified in sub-rules(2) and (3), by making an application to the appropriate assessing authority in Form VAT-A4 and appending thereto the following documents, namely, -

> *(i)copy of the return(s) in Form VAT-R1 under these rules and in Form I under the Central Sales Tax (Punjab) Rules, 1957, as applicable to the State of Haryana, for the quarter if not already filed,*
>
> *(ii)original copies of tax invoices relating to the claim of input tax in respect of the purchase of the goods;*
>
> *(iii)invoices showing the sale of the goods in the State or in the course of inter-State trade and commerce along with the documents of dispatch and delivery of the goods in other State(s);*
>
> *(iv)invoices showing the sale of the goods in the course of export out of the territory of India along with the custom clearance certificates and shipping documents; and*
>
> *(v)such other documents or evidence as the assessing authority may require for its satisfaction relating to the payment of the input tax and the tax leviable on the sale of the goods, wherever applicable.*

(7) The assessing authority shall, on receiving an application under sub-rule(6), examine the same and pass an order within thirty days of receiving the application either to allow the refund in full or in

part or to disallow the same for reasons to be communicated in writing and where the refund is allowed, it shall issue refund in the manner specified in sub-rule(4) to the applicant. The order passed under this sub-rule allowing the refund shall be provisional and shall be subject to final order of assessment in the case.

(8) Where the dealer is unable to identify the goods purchased with the goods sold, or used in manufacturing and sold, it shall be presumed that the goods purchased have been sold, or they have been used in manufacturing and sold, as the case may be, in the chronological order in which they were acquired.

42. Approval of Refund

The following authorities shall be competent to allow refund, arising from a single order, of the amount mentioned against each:

1. Commissioner	*Any amount*
2. Officer incharge of the range	*Ten lakh rupees*
3. Officer incharge of the district	*Five lakh rupees*
4. Excise and Taxation Officer or Assistant Excise and Taxation Officer	*Fifty thousand rupees*

The lower authority/authorities shall submit the record of the case along with his/their recommendation(s) to the competent authority at the appropriate level at least thirty days before the time prescribed for issuing refund without interest lapses and the competent authority shall intimate its decision to the lower authority/authorities well in time. It may, by order in writing, increase or decrease the amount of refund or may order that no refund is due but no adverse order shall be passed without giving the affected person a reasonable opportunity of being heard."

As per scheme of the provisions of the '2003 Act' as also the Haryana Value Added Tax Rules, 2003 governing refund it would be open for the Assessing Authority at the stage of assessment to ascertain if a dealer has paid any amount in excess of tax, interest on penalty assessed or imposed on him, allow refund of the excess amount or allow the same to be carried forward for adjustment with future tax liability. Aforesaid is the mandate of Section 20(4) of the '2003 Act'. Under Rule 41(4) of the Haryana Value Added Tax Rules, 2003 it is again at the stage of framing the assessment, if the Assessing Authority finds that the sum of tax paid and input tax exceeds the sum of output tax and purchase tax, it shall determine the excess amount and from the excess amount it shall then deduct any amount due from the dealer whether under the '2003 Act' itself or the Central Act and then allow from the balance amount refund of the amount. However, such exercise is circumscribed under Rule 41(4) itself in terms of an 'option' being exercised by the dealer/assessee either to seek a refund or an adjustment order.

In the facts of the present case the positive stand taken on behalf of the department is that the dealer had claimed excess carried forward in the annual return filed in Form VAT R-2. The Assessing Authority allowed the same in terms of assessment order dated 30.03.2018 (Annexure P-1). It is not even the case projected on behalf of the petitioner that a refund had been claimed at the stage of filing of the annual return. To the contrary, the pleaded case of the petitioner itself is that after passing of the assessment order dated 30.03.2018 (Annexure P-1), the application seeking refund had been made on 14.06.2018 (Annexure P-2) i.e. subsequent in point of time.

This Court is in agreement with the reasoning furnished in the impugned order dated 27.10.2020 at Annexure P-10 that once an assessment order has been passed then any application for refund thereafter would be nonest and would not be maintainable before the Assessing Authority. An assessment order having been passed, the Assessing Authority cannot change or alter the same. In case the petitioner had felt aggrieved of the assessment order dated 30.03.2018 in not having allowed a refund as opposed to having allowed excess carried forward, it was open for the petitioner to have availed the statutory remedy of appeal under Section 33(5) of the '2003 Act. Concededly petitioner chose not to do so.

With due deference the Division Bench judgment relied upon by the petitioner in **Haryana State Warehousing Corporation(supra)** would not enure to its benefit as the scheme and mandate under section 20 of the '2003 Act' as also Rule 41 of the Haryana Value Added Tax Rules, 2003 were not considered and dealt with.

We find the submission raised on behalf of the petitioner as regards the Assessing Authority lacking jurisdiction to entertain the issue of refund and for the matter to have been forwarded to a Committee to be wholly misconceived. In this regard it is observed that under Rule 42 of the Haryana Value Added Tax Rules, 2003 the case for refund is to be forwarded to a Committee within a stipulated time frame only in a situation when a refund has been allowed in the assessment order. In the facts of the present case no refund was allowed as the petitioner had not claimed the same in the annual return filed in Form VAT R-2. Rather the petitioner had claimed excess carried forward in his annual return and the same was allowed. There was no occasion for Rule 42 to come into operation in such facts and circumstances.

For the reasons recorded above, we do not find any patent infirmity or illegality in the impugned order dated 27.10.2020 (Annexure P-10). Rather the same has been passed on valid and cogent reasons and in terms of the relevant provisions of the '2003 Act' as also Rules framed thereunder.

No merit.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

16.12.2022
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No ...