IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.20944 of 2020 (O&M)
Date of Decision : 5th July, 2022

M/s Raghav Industries

….Petitioner

Versus

State of Haryana and others

…..Respondents

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

Present : Mr. Joginder Pal Sharma, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. Advocate General, Haryana.

PANKAJ JAIN, J.

CM No.18149-CWP-2021

Application is allowed as prayed for.

The accompanying replication filed by the petitioner to the reply filed on behalf of respondents No.1 to 4 is taken on record.

Registry is directed to tag the same at the appropriate place.

Copy already stands furnished to learned State Counsel.

Application stands disposed off.

CWP No.20944 of 2020

By way of present writ petition under Article 226 of the Constitution of India, the petitioner prays for grant of writ in the nature of certiorari for quashing the order dated 11th August, 2020, whereby the claim of the petitioner for interest on delayed payment of refund has been declined. The petitioner a proprietorship firm was a registered dealer under Haryana Value Added Tax Act, 2003 (for short, 'the 2003 Act').

2. As per the petitioner, the Competent Authority passed Assessment Order dated 11th December, 2018 *qua* Assessment Year 2016-17 whereby he was allowed to carry forward excess amount of Rs.6,72,247/- and a sum of Rs.6,36,000/- became due for refund. As per the petitioner, he was entitled for refund of the said amount payable to him within 60 days from the order of assessment and, thereafter, was further entitled for simple interest @ 1% per month in case the payment was delayed.

3. He claims that after passing of the Assessment Order, the petitioner applied for refund on 25th January, 2019. The refund was though issued vide Refund Voucher dated 11th June, 2020 yet no interest was paid. It is claimed that the petitioner was entitled for interest for the period of 18 months on the delayed refund. The same was claimed vide Communication dated 27th July, 2020. However, the same has been rejected vide impugned order dated 11th August, 2020 passed by respondent No.4.

4. Reliance has been placed upon Section 20(10) of the 2003 Act. In order to support his arguments, Ld. Counsel for the petitioner has relied upon the order passed by Division Bench of this Court in **CWP No.11677 of 2011** titled as **M/s Capital Builders vs. State of Haryana and others**,

dated 3rd February, 2012. Ld. Counsel for the petitioner claims that the order being in teeth of the law laid down by this Court deserves to be set aside and respondents be directed to pay the interest as per law.

5. Respondents have filed reply through Excise & Taxation Officer-cum-Assessing Authority, Panchkula. It has been asserted that as per Section 20(6) of the Haryana VAT Act any amount refundable to any person is subject to the approval in the prescribed manner. Since the refund payable to the petitioner was approved only on 4th of June, 2020, he would have been entitled for interest only 60 days thereafter as per Section 20(10). In the present case, since the refund has been granted within 7 days from the date of approval by the Competent Authority, the present writ petition deserves dismissal. He further submits that in **M/s Capital Builders'** case (supra) provision contained in Section 20(10) was not considered hence, the same being *per incuriam* cannot be relied upon.

6. We have heard Ld. Counsel for the parties and have carefully perused the records of the case.

7. So far as judgment rendered by the Division Bench in **M/s Capital Builders'** case (supra) is concerned, the refund claimed in that case was under Section 20(5) and, thus, Section 20(10) was not attracted. The ratio laid down in the said case shall not be applicable to the present case.

8. Facts are not in dispute. Both parties rely on Section 20. Each of them is interpreting Section 20 of the 2003 Act to advance his stand. It

will be apposite to refer to Section 20 of the 2003 Act which reads as under :-

> ***Section 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 from a VAT dealer, the input tax shall be duly adjusted.*
>
> *(2) Refund of input tax shall be admissible to a VAT dealer in accordance with the formula provided under sub-section (1) of Section 8 of this Act -*
>
> *(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,*
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> *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 order of approval of the refund by the prescribed authority shall carry with it simple interest at the rate of one per cent per month for the period from the date of order of approval of the refund by the prescribed authority 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."

9. It needs to be noticed that Section 20(10) was amended vide

Amending Act 10 of 2009 and substituted with the present clause, as reproduced above. Prior to the amendment the same reads as under :-

> Section 20 xxxxxx
>
> "*(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."*

10. Section 20 of the 2003 Act contemplates three eventualities where the refund is payable :-

(i) Where the Assessing Authority on assessment finds that a dealer has paid the amount in excess of tax, interest or penalty assessed or imposed upon him under the Act i.e. Section 20(4);

(ii) When the amount becomes refundable as a result of an order passed by any Court, Appellate Authority or Revisional Authority i.e. Section 20(5); and

(iii) Any amount ultimately found due to any person which he paid as a result of an order passed under the Act i.e. Section 20(8).

11. These are the three eventualities in which refund becomes due. It does not and cannot amount to classification of 'Refund'. 'Refund' remains one single specie. As per Section 20(6) the amount refundable under Section 20(4) and Section 20(5) shall be subject to the approval in the

prescribed manner by the prescribed authority. Section 20(9) mandates that for any amount not falling under sub-Section (8) refunded after the period of 60 days shall carry with it simple interest @ 1% per month for the period from the date of making the application to the date when refund is made. Section 20(10) (as substituted vide Haryana Act 10 of 2009) provides for that any amount due under sub-Section (4) but not refunded within 60 days from the date of approval of the refund by the prescribed authority shall carry with it simple interest @ 1% per month from the date of approval of the refund by the prescribed authority to the date when refund is made.

12. The stand of the Revenue is that since the refund to the petitioner was made on 11th June, 2020 i.e. within 7 days of the date of approval (4th June, 2020), the petitioner shall not be entitled for any interest under Section 20(10) of the Act. At the first blush, the argument seems to be attractive. However, if that be so, Section 20(10) as being read by Revenue shall render the provision contained in Section 20(9) otiose. Section 20(9) includes the eventuality where refund is payable under Section 20(4). *Prima facie* Section 20(9) and Section 20(10) seem to be in conflict but that is not so. Section 20(10) cannot be read in isolation but has to be read in reference to the whole provision contained in Section 20. Section 20(6) provides for approval in the prescribed manner. The prescription is provided under the Rules framed by the State in exercise of the powers conferred under Section 60(1) of the 2003 Act called 'The

Haryana Value Added Tax Rules, 2003' (hereinafter referred to as 'the Rules'). Rule 42 prescribes for approval of refund as under :-

*"**42. Approval of refund.** (Section 20(6)) -The following authorities shall be competent to allow refund, arising from a single order, of the amount mentioned against each:*

"1	*Committee comprising of three senior most Additional Excise and Taxation Commissioners from department side posted at the Head Quarter and an officer not below the rank of Deputy Excise and Taxation Commissioner nominated by the Commissioner as the Member Secretary. The senior most amongst these Additional Excise and Taxation Commissioners shall be the Chairman.*	*above fifty lakh rupees"*
"2	*Committee comprising of concerned Joint Excise and Taxation Commissioner (Range) as the Chairman; the other two members being one-the senior most Deputy Excise & Taxation Commissioner posted in any district falling in the Range (DETCS may be from either wing i.e. Sales Tax or Excise or Inspection etc. in any of the districts falling in the range); second-the Deputy Excise & Taxation Commissioner (Sale Tax) of the district concerned. The Excise and Taxation Officer working as Nodal Officer (Refund) in the district concerned shall work as Member Secretary.*	*above twenty-five lakh and upto fifty lakh rupees"*
"3	*Committee comprising of Deputy Excise and Taxation Commissioner (Sales Tax) of the district concerned as the Chairman; the other two members being two senior most Excise & Taxation Officers posted in the district (the ETOs may be from either wing i.e. Sales Tax or Excise or Inspection etc.). The Excise Taxation Officer working as Nodal Officer (Refund) in the district concerned shall work as Member Secretary.*	*upto twenty five lakh rupees"*

The lower authority/authorities shall submit the record of the case alongwith his/her/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.*
>
> *The Committees constituted for the purpose of sanction of refund shall meet the least once in a fortnight to decide the cases of refund sent to them for approval.*
>
> *The Commissioner shall be competent to decide the eligibility of an officer with regard to his/her seniority about membership of any committee and to issue instructions for smooth functioning of the committees."*

13. Rule 42 casts a statutory duty upon the lower authority to submit the record of the case to the competent authority at least 30 days before the time prescribed for issuing refund without interest lapses. The competent authority is further under statutory obligation to intimate its decision to the lower authority well in time. Here the expression 'well in time' connotes the period before the time prescribed for issuing refund without interest as contemplated under Section 20(9) lapses. Thus, the conjoint reading of Section 20 read with Rule 42 makes it clear that the procedure of the approval of the refund has to be finalized within the time contemplated under Section 20(9) i.e. 60 days. The period of 60 days as contemplated under Section 20(10) will be further counted thereafter. Meaning thereby in the present case after the refund became due to the

petitioner on 11th December, 2018, the approval ought to have been obtained on or before 10th February, 2019. Thereafter, period as contemplated under Section 10 would have started i.e. further 60 days i.e. upto 11th of April, 2019. Admittedly, in the present case the refund has been paid to the petitioner only on 11th of June, 2020. Thus, the petitioner is entitled for interest from 12th of April, 2019 till 11th of June, 2020 i.e. for 16 months @ 1% per month in terms of the provisions contained in Section 20 (10) of the 2003 Act.

14. As a sequel of the aforesaid discussion, the present petition is allowed. The impugned order dated 11th of August, 2020 whereby the claim of the petitioner for interest on delayed payment of refund has been declined for the Assessment Year 2016-17, is set aside. The petitioner is held entitled to simple interest @ 1% per month for the period from 12th of April, 2019 till 11th of June, 2020 on the refund amount of Rs.6,36,000/- alongwith interest thereon @ 9% per annum from the date of filing of this petition.

15. Accordingly, the respondents are directed to calculate the amount of interest and pay the same to the assessee/petitioner within one month from the date of receipt of certified copy of this order.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

July 05, 2022
Dpr

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No