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

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**CWP No.10380 of 2001 (O&M)
Date of Decision: 02.02.2023**

M/s Escorts Limited ... Petitioner

Versus

State of Haryana and another ... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Vaibhav Sharma, Advocate,
for the petitioner.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

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MANISHA BATRA, J.

1. The instant writ petition has been filed by the petitioner-Company which is registered under the provisions of Haryana General Sales Tax Act, 1973 (for short 'Act, 1973'), on the grounds that it had deposited advance sale tax due for the month of March 1998 in that month itself, on a letter written by the Deputy Excise & Taxation Commissioner, Faridabad calling upon it to do so and assuring that excess payment could be adjusted in the month of April 1998. Previously also, the petitioner used to deposit excess amount as advance tax on the request made by the department and such advance tax was adjusted in the

Ist quarter of next financial year. The petitioner received three notices dated 20.10.1999 as issued by respondent No.2 alleging that the petitioner had made short payment of tax amount of Rs.70,19,943/- and had claimed excess payment of Rs.72,89,684/- in the last quarter of 1997-98. The petitioner requested the respondent No.2 to complete the assessment for the previous years 1996-97 and 1997-98 as without framing assessment of those years, it could not complete the assessment for the year 1998-99. The respondent, however, was bent upon framing assessment for the quarter ending 30.06.1998 without completing the assessment of the previous years which constrained the petitioner to file a Civil Writ Petition No.2162 of 2000. The said writ petition was disposed of by this Court vide order dated 20.09.2000 giving direction to the respondent No.2 to frame assessment for the years 1996-97 and 1997-98 before completing the assessment for the year 1998-99. The respondent No.2 then passed an order dated 30.10.2000 framing assessment for the year 1997-98. The respondent No.2 also passed order for refund of the amount which was deposited by the petitioner in excess in the month of March 1998. The petitioner, however, returned the refund orders in original to respondent No.2 vide letter dated 15.01.2001 as it had already adjusted the said amount. In order to make up the deficiency of amount of tax for the first quarter 1998-99 i.e. from April to June 1998, the petitioner deposited an amount of Rs.2,90,449/-. It was further submitted by the petitioner that while framing assessment for the year 1998-99, the respondent No.2 had imposed interest of a sum of Rs.1,37,988/- and had demanded additional amount of Rs.2,24,078/- which was so deposited by way of pay order as on 23.05.2001.

2. The petitioner further submitted that respondent No.2,

thereafter issued another notice which was received by it on 20.04.2001. Demand for payment of interest on an amount of Rs.72,89,684/- under Section 25 (5) of the Act, 1973 was raised vide this notice. The petitioner submitted reply to the said notice alleging that the impugned demand was not sustainable. It has challenged the validity of this notice by making prayer for issuing a writ of certiorari thereby quashing the said notice (Annexure P-10) and also prayed for passing a writ of mandamus thereby directing the respondent No.2 to adjust the amount already paid from the date of accrual of payment.

3. The respondents in their written reply alleged that unless and until the excess amount deposited by the petitioner was quantified, the same could not be adjusted by it in the quarter ending 31.03.1998 of the financial year 1997-98 in the subsequent year 1998-99 as the excess amount, if any, was to be quantified only after the assessment had been framed and was refundable only thereafter. It was submitted that the refund adjustment order was issued to the petitioner along with the assessment order and it had no right to seek adjustment of the same for the purposes of assessment for the subsequent year. Therefore, it was asserted that the writ petition was not maintainable as no legal right of the petitioner had been infringed and dismissal of the same had been prayed for.

4. The petitioner also filed rejoinder reiterating the pleas taken in the writ petition.

5. We have heard learned counsel for both parties at considerable length. It will be proper to firstly refer to the relevant provisions of Section 25 (5) of the Act, 1973 which are relevant for the purpose. Section 25 (2A) says that every dealer who is liable to pay tax and who paid and was liable

to pay tax including Central Sales Tax according to the monthly or quarterly returns as the case may be, shall pay tax including Central Sales Tax by the 15th of every month on his turnover of the previous month. Then as per sub-Section (5), if any dealer fails to pay tax as required by sub-Section (2A), he shall be liable to pay in addition to the tax payable, simple interest on the amount of tax remaining unpaid at 1% per month from the date commencing with the date following the last date for the payment of tax. It is well settled proposition of law that an assessee can be directed to pay interest only where he is shown to have attempted to contravene the provisions of the Act, 1973 with the object to evade payment of rightful tax levied thereunder. In **M/s Hindustan Steel Ltd. v. State of Orissa**, AIR 1970 SC 253, the Hon'ble Supreme Court while dealing with the considerations relevant for imposition of penalty under the provisions of Orissa Sales Tax had held that the liability to pay the penalty did not arise merely upon the proof of default in registering a dealer. Such a liability could be fastened only where the assessee was shown to have attempted to contravene the provisions of the Act, 1973 with the object to evade payment of rightful tax levied thereunder.

6. In the instant case, it is not in dispute that in the previous years on the asking of the department, the petitioner had paid tax in advance. The department also adjusted it while framing assessment for the year 1998-99. It is not a case where the petitioner made payment of excess amount of tax under some mistake. When the excess amount of tax so deposited by him, was refunded by issuing adjustment orders, the petitioner had not received the same and had made prayer for adjustment of the same for the amount of tax for the year 1998-99 which was so adjusted by the respondent. The

respondent on one hand recovered excess amount of advance tax by asking the petitioner to do so and did not frame assessment and refunded the said amount only at the time of complying with directions given by this Court in Writ Petition No.2162 of 2000 to frame assessment for the previous years. On the other hand, it started demanding interest qua liability of subsequent years. There was no allegation against the petitioner that it had acted deliberately in defiance of any law or was guilty of any dishonest conduct or had made any attempt to evade payment of rightful tax levied under the provisions of the Act, 1973. The department had enjoyed the benefits of advance tax and when the petitioner had asked it to adjust the tax for the subsequent years against the said advance payment of tax, then interest had been imposed upon it. This action of respondent is certainly against the principles of natural justice. The well settled proposition of law is that penalty either by way of claiming interest or otherwise should not ordinarily be imposed unless the assessee either acted deliberately in defiance or disregard of its obligation. Unquestionably, an authority is competent to impose penalty in case, of a technical or intentional breach of provisions of an Act but where such breach flows from a bona fide belief, then the offender is not liable to act in the manner prescribed by the Statute.

7. In view of this discussion, we are inclined to hold that the impugned notice as served upon the petitioner thereby raising demand of interest on the amount of Rs.72,89,684/- is not sustainable and is liable to be quashed. Accordingly, the writ petition is allowed. The impugned notice Annexure P-10 is set aside and the respondents are directed to not to claim any interest on the amount of tax already deposited by the petitioner by treating it as short deposit.

8. All the pending civil miscellaneous application(s), if any, automatically stand disposed of.

(RITU BAHRI) **JUDGE**	**(MANISHA BATRA)** **JUDGE**

02.02.2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No