

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

(113)

**CWP-11082-2023
Decided on : 31.10.2023**

M/s Ganesh Steel (India)

.....Petitioner(s)

Versus

State of Punjab & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Pradhuman Garg, Advocate for the petitioner (s).

Mr.Arjun Sheoran, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

1. Prayer in the present writ petition, filed under Article 226/227 of the Constitution of India is for quashing the order dated 28.04.2023 (Annexure P-3) whereby the State Tax Officer has declined the refund of Rs.8,80,992/- on the ground that the Department is in the process of filing an appeal against the order No.881 dated 19.09.2022 of the Appellate Authority. Accordingly, the refund application was recommended to be rejected.

2. It is pertinent to mention that the Deputy Commissioner of State Tax (Appeal), Patiala Division had allowed the appeal on 12.07.2022/19.09.2022 (Annexure P-1) under Section 107 of the Punjab GST Act/Central GST Act, 2017 read with Section 20 of the Integrated GST Act, 2017 against the order dated 05.09.2019 passed by Assistant Commissioner, State Tax, Mobile Wing, Chandigarh-2 wherein there had been a tax penalty and fine under Section 130 of the Act to the tune of Rs.8,80,992/-.

3. In spite of the fact that the order was never appealed against and a period of more than 1 year 4 months have almost gone by, the State has chosen not to refund the amount while passing the impugned order. The writ petition first came up for hearing on 03.07.2023 and an opportunity was given to the State to submit whether an appeal had been filed or not. More time was taken on 21.07.2023 and 29.09.2023 and proceedings had been deferred. However, the appeal has still not been filed.
4. In such circumstances, it is clear that the State is only dilly-delaying on the issue and merely on account of the fact that the State is in the process of filing an appeal, we do not feel that the State is justified in divesting the petitioner of his fruits of litigation which have accrued to him despite a period of 1 year 3 months having gone by.
5. Resultantly, we quash the said order dated 28.04.2023 (Annexure P-3) and direct the State to refund the amount due within 2 weeks from the receipt of certified copy of this order. Needless to say that as and when any order is passed in favour of the State in further proceedings, the said directions of refund would not stand in the way to recover the amount refunded.
6. The present writ petition stands allowed in the above-said terms.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

31.10.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No