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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1420-2023 (O&M)
Date of Decision: 23.04.2024

M/s O.P. Enterprises (India)
. . . . Petitioner

Vs.

State of Punjab and others
. . . . Respondents

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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Present: Mr. Sandeep Goyal, Advocate and
Mr. Avneet Singh, Advocate
for the petitioner.

Mr. Saurabh Kapoor, Addl. A.G., Punjab.

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<u>SANJEEV PRAKASH SHARMA, J.(Oral)</u>

1. Heard learned counsel for the petitioner and learned counsel for the respondents at length.
2. The petitioner by way of this writ petition has prayed as under:

> *"(i) Issue a writ of mandamus directing the respondents to grant refund alongwith interest in pursuance to the Application dated 14.10.2022 (Annexure P-15) filed in Form VAT-29 by the petitioner to which it has been found entitled in view of the order passed by the Ld. Deputy Excise and Taxation dated 07.07.2022 (Annexure P-14) and also on account of excess ITC as reflected in VAT 20 for the assessment year 2017-18 (Annexure P-18), which has not been issued till date though despite various written requests reminding the respondent no.3 to issue refund forthwith Moreover, the 60 days as per rule 52(10) of the Punjab VAT Rules, 2005 for issuing a refund had already been expired;*
>
> *AND/OR*

> *(ii) any other appropriate writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case"*

3. Learned counsel for the respondents has submitted that the claim set up by the petitioner for grant of interest from the date the first application was filed, is misconceived. In order to support his submissions, he has taken this Court to the counter-affidavit filed by the Excise and Taxation Officer dated 13.03.2024, and submits that on 27.11.2020, application in Form VAT-29 depicting excess ITC of Rs.48,20,533/- accrued for the years 2010-11 to 2013-14. However, NIL annual statement was filed in Form VAT-20 for the year 2014-15. Keeping in view the same, assessment proceedings for the year 2014-15 were initiated and assessment order was framed on 26.11.2021. At the same time, the refund application dated 27.11.2020 was rejected on the ground that the ITC was brought forward from previous years, and the petitioner was directed to apply for refund from the relevant year.
4. It is stated that the petitioner filed appeal against the assessment order dated 26.11.2021. On 07.07.2022, the DETC(A) set aside the assessment order dated 26.11.2021 for the year 2014-15, and thereafter fresh application for refund was moved by the petitioner on 14.10.2022. Vide another application dated 19.10.2022, the petitioner informed that part of the excess ITC has been utilized by adjusting against output tax liability accrued for the year 2017-18 (April, 2017 to June, 2017) and excess ITC was reduced to Rs.44,79,863/-. The petitioner further requested to frame the assessments for the years 2015-16, 2016-17 and 2017-18. The same were framed vide order dated 20.02.2023

determining an excess of a sum of Rs.41,21,072/-. Thereafter, another application for refund of excess ITC was moved on 24.02.2023 which was allowed on 16.03.2023. Thus, he submits that the interest on the refund of excess ITC would be accruable only after expiry of sixty days of the last application moved i.e. 24.02.2023, and interest from expiry of sixty days of 27.11.2020 is not payable.

5. Learned counsel also relies on judgment passed by the Supreme Court in the case of ***Ranbaxy Laboratories Ltd. vs. Union of India and others, (2011) 10 SCC 292,***

> *"17. We, thus find substance in the contention of the learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd.[2] In the said case, while dismissing the special leave petition filed by the Revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under: (ELT p. A-27)*
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> *"Heard both the parties.*
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> *In our view the law laid down by the Rajasthan High Court succinctly in J.K. Cement Works v. CCE & Customs[3] vide para 33: (ELT p. 11)*
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> *'33. A close reading of Section 11-BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11-B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11-BB, non-payment within three months from the date of the commencement of Section 11-BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered*

by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference.'

The special leave petition is dismissed. No costs."

6. We have considered the submissions.

7. Rule 52 of the Punjab VAT Rules, lays down the procedure for refund. As per Rule 52(10), the refund voucher in form VAT-30 or refund adjustment order in form VAT-30A, shall be issued within a period of sixty days from the date of submission of application for refund as provided under Rule 52(9). It would be apposite to quote the said Rule for the said purpose:

"52. PROCEDURE FOR REFUND

(9) (a) Persons or organizations listed in Schedule-G, may apply to the designated officer for the refund of tax in Form VAT-29A

(b) The refund, shall be granted only on certification given by the person or the Chief of the organization that the goods are purchased for use in the official functioning of the organization.

(c) Refund of tax under clause (a) shall be allowed on purchases made from a taxable person or a registered person against invoice. (d) A Gau- shala listed in the Schedule 'G', shall be allowed to get refund of tax in the following manner, namely:

(i) a Gau-shala, shall be allowed refund of tax up to rupees three lac every year on all purchases meant for such Gau-shala; and

(ii) a new Gau-shala, shall be allowed refund of tax up to rupees five lac on the purchases made for, construction material and other goods meant for such Gau-shala only for the first year:

PROVIDED THAT after a period of one year such new Gau-shala, shall be treated as an old Gau-shala and it shall be given the same benefit as is permissible to a Gau-shala under sub-clause (i)

> *(10) The refund voucher in form VAT-30 or refund adjustment order in form VAT-30 A, as the case may be, shall be issued within a period of sixty days from the date of submission of application for refund."*

8. It would be also apposite to quote Section 40 of the Punjab VAT Act, 2005 which provides for interest on delayed refund:

> *"SECTION 40. INTEREST ON DELAYED REFUND:*
>
> *Where an amount required to be refunded by the Commissioner or the designated officer, to any person, is not so refunded to him within a period of sixty days from the date of the application, a simple interest at the rate of half per cent per month on the said amount shall be paid to such person from the date, immediately following the expiry of the period of sixty days to the date of the refund.*
>
> *EXPLANATION.*
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> *(1) If the delay in granting the refund within the aforesaid period of sixty days) is attributable to the taxable person or the registered person, as the case may be, whether wholly or in part, the period of the delay attributable to him, shall be excluded from the period for which interest is payable.*
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> *(2) Where any question arises as to the period to be excluded in terms of Explanation (1), for the purposes of calculation of interest, such question shall be determined by the Commissioner, whose decision shall be final.*
>
> *(3) Interest under this section, shall be calculated by considering part of the month as one month."*

9. A joint reading of the provisions of the Act and the Rules would imply that on the expiry of period of sixty days from the date of application, interest is required to be paid.

10. The plea raised by learned counsel for the respondents/Revenue is that the original application dated 27.11.2020 would have to be treated as having been rejected, and it is only the fresh application finally moved

on 24.02.2023 which is required to be considered for computing sixty days from the date of application.

11. We however disagree. Application which was moved on 27.11.2020 was for the refund of the excess ITC which accrued for the years 2010-11 to 2013-14 of Rs.48,20,533/-, whereas all the subsequent facts as pointed out by learned counsel for the respondents are for the assessment proceedings which started from 2014-15 to 2017-18. The subsequent aspects and facts would not deprive the assessee for the benefit of interest on the excess ITC which accrued to him on the refund amount for the period from 2010-11 to 2013-14, and the same was not released after moving application for refund dated 27.11.2020.
12. Hence when the application moved on 27.11.2020, it was binding upon the respondents to have released the interest on the accrued amount after sixty days from the date of application on account of non-payment of refund, which admittedly has not been done. Even the assessment proceedings which they initiated for the year 2014-15 were set aside by the DETC(A) vide its order dated 07.07.2022. Thus, it cannot be said that they were in any manner correct in withholding the said refund application.
13. Subsequent adjustment of the amount for the assessment years 2015-16, 2016-17 and 2017-18 would not, in any manner, deprive the assessee of the interest or the refund amount which accrued on 27.11.2020.
14. However, we would not comment on the procedure adopted at this stage, and the final amount of excess paid on Rs.41,21,072/- after

adjusting the assessments up to the year 2017-18, does not warrant any interference.

15. So far as payment of interest is concerned, the same accrued from the date the first application was moved i.e. 27.11.2020 on the total amount of Rs.48,20,533/-. The interest as payable under Section 40 of the Act would therefore be paid on amount of Rs.48,20,533/-, from the expiry of sixty days of 27.11.2020 i.e. 27.01.2021 up to 20.02.2023 when the refund was made. However, the said interest would be calculated from 27.01.2021 up to 20.02.2023, whereafter the interest is not payable as the amount of Rs.41,21,072/- was paid.

16. Writ Petition stands ***allowed*** as above.

17. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

April 23, 2024
Mohit goyal

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***