

CWP No.23087 of 2021

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2024:PHHC:020297-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.23087 of 2021

Date of Decision:13.02.2024

M/s DLF Home Developers Limited

....Petitioner

Versus

Excise and Taxation Officer-cum-Assessing Authority, Gurugram
and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Puneet Agrawal, Advocate,
for the petitioner.

Mr. Sharan Sethi, Additional Advocate General, Haryana

SANJEEV PRAKASH SHARMA, J. (Oral)

1. A demand with regard to additional liability of Tax on account of revenue from constructed property was raised against the petitioner on 26.06.2014. The petitioner under protest deposited the tax on 14.08.2014 and contested the same. He filed an appeal which came to be allowed on 30.05.2017 and thereafter the petitioner requested for refund of the tax amount. It is informed that the refund was released on 22.03.2019 but while releasing the refund, the interest amount was not paid. In the circumstances, he demanded the payment of interest and when the same was not released, he preferred this petition before this Court.

2. Learned counsel for the petitioner has invited attention of this Court to Section 20 sub-sections (8) & (9) of the Haryana Value Added Tax Act, 2003, which read as under:-

“20. Refund..

(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 sub-section (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.”

3. The respondents have filed their counter affidavit and submitted that the refund of the petitioner has accrued as a result of the an order passed by the Haryana Tax Tribunal and therefore the case falls under Section 20(5) read with Section 20(9) of the Haryana Value Added Tax Act, 2003. The procedure for approval by the prescribed authority as provided under Section 20(6) read with Rule 42 of the HVAT Rules was followed and when the prescribed authority approved the refund vide its order dated 22.02.2019 and 23.05.2019, the amount was credited in the bank account of the petitioner on 22.03.2019 and 21.06.2019 respectively within 30 days from the approval.

4. Learned counsel for the respondents submits that there is no

delay in granting the refund to the petitioner and therefore no interest is required to be paid.

4. We have carefully considered the submissions.

5. Section 20 provides for the procedure of refund. Once it is declared that the amount is to be refunded after taking final approval, the amount has to be refunded. Sub-section (8) as noticed above provides that ultimately when the amount has been found to be due the same has to be paid with simple interest @ one per cent per month for the period from the date of payment to the date when refund is given to him. Thus, the element of causing delay or the interest on account of delayed payment is not a criteria for payment of interest in terms of Section 20(8). Independent of the reasons for the delay in payment, or late payment, the interest has to be paid in all circumstances, once it is found that the amount is to be refunded. The interest rate has also been prescribed.

6. Keeping in view of the above, the claim of the petitioner deserves to be allowed and is accordingly allowed. The respondents are directed to make the payment of interest @ one per cent per month from 14.08.2014 i.e. the date of payment to the date of refund i.e. 22.03.2019 and 21.06.2019. The amount shall also be paid at the initial rate of interest in terms of Section 20(9) of the Act from the date of application as prescribed under Section 20(9) of the Act.

7. The compliance of the order shall be made positively within a period of one month from today, failing which further interest as available under sub-section (8) shall be paid alongwith costs of

Rs.10,000/- per month till the payment, to be recoverable from the concerned officer who causes delay in making the payment.

8. Pending applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 13, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No