213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-40330-2018 (O&M)

AMARJIT SINGH BAJWA

. . . . Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

. . . . Respondents

CWP-25015-2021 (O&M)

AMARJIT SINGH BAJWA

. . . . Petitioner

Vs.

STATE OF PUNJAB AND OTHERS

. . . . Respondents

Date of Decision: 06.11.2024

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

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Present: Mr. Puneet Kansal, Advocate and
Ms. Monika Kansal, Advocate,
for the petitioner(s) (in both the cases).

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

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned counsel for the petitioner has invited attention to the order passed by the Division Bench in the case of *M/s Cobra Instalaciones Y Services vs. State of Punjab and others in LPA No.740 of 2009* and followed in the case of *M/s Sahil Builders vs. Bharat Sanchar Nigam Limited and others in LPA No.33 of 2009*, to submit that in view of the fact that in *M/s Keshob Plants vs. Bharat Sanchar Nigam Limited and others in CWP No.19579 of 2002*, Section 10(C) of the Punjab General

Sales Tax Act, 1948 and Rule 25A of the Punjab General Sales Tax Rules, 1949 have been declared unconstitutional, the consequence shall follow and the petitioners would be entitled to receive interest on the amount which is required to be refunded.

2. It would be apposite to quote the order passed by the Coordinate Bench in *M/s Sahil Builders* (supra) which is as under:

> *"We have heard the learned counsel for the parties at some length.*
>
> *The question which falls for determination in these appeals is whether the appellant- dealer would be entitled to statutory interest from the date of deduction of tax in terms of Section 12(3) of the Punjab General Sales Tax Act, 1948 (for brevity 'the Act').*
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> *The matter is no longer res-integra as the similar issue involved in these petitions came up for consideration before this Division Bench in a bunch of appeals including the case of M/s Cobra Instalaciones Y Services v. State of Punjab and others (LPA No. 740 of 2009). In the concluding paras, the Division Bench has held as under:*
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> > *"A perusal of Section 12(3) of the Act would show that the amount is required to be refunded and if the refund is not made within 90 days of the date of the order then the dealer is to become entitled to get simple interest on such amount at the rate of one percent per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half per centum per month till the refund is made. The amount of refund has already been disbursed. The writ petitions were filed in the year 2005 and the refund has been made by the respondents on 7.3.2006 admittedly under Section 12 of the Act and according to the provisions of Section 12(3) of the Act the delay in refund would attract the imposition of interest as per the rates specified in Section 12(3) of the Act. Accordingly there cannot be any escape*

> *from the conclusion that interest was payable to the dealer-appellant.*
>
> *As a sequel to the above discussion, the order dated 13.8.2008 of the learned Single Judge is supplemented and modified to the extent that interest in terms of Section 12 (3) of the Act deserves to be awarded to the appellant- dealers. The order of the learned Single Judge passed on the applications on 20.7.2009 is set aside. The respondents are directed to calculate the interest and disburse the same within a period of six weeks from the date of receipt of a certified copy of this order."*
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> *In view of the above enunciation of law, the instant appeals are also disposed of in terms of the judgement in* *M/s Cobra Instalaciones Y Services's case* *(supra)."*

3. Learned counsel for the Revenue although admits of the position of Section 10(C) of the PGST Act, 1948 having been declared *ultra vires,* but submits that the same should not be considered *in rem* as it would create financial burden and the refund will have to be paid to all.
4. We have noticed in CWP-40330-2018 that the respondents had rejected the application praying for refund. The order of rejection of refund application is accordingly set aside.
5. We are afraid that the contentions raised by the respondents will have no place to stand in law. Once the provision of an Act has been declared *ultra vires,* the same would have to be implemented *in rem* and apply *mutatis mutandis* to all the affected persons. The respondents would therefore have to pay the amount withheld. Interest would also have to be paid as per law on the amount withheld.
6. Accordingly, both the writ petitions stand allowed.

7. The respondents are now directed to calculate the interest and disburse the same within a period of six weeks from the date of receipt of this order.

8. Order dated 13.03.2020 (Annexure P-13) in CWP-25015-2021 is also set aside.

9. All pending applications also stand disposed of accordingly.

10. A photocopy of this order be placed on the file of other connected case.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

November 06, 2024
Lavisha

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