2024:PHHC:144746-DB

213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

CWP-37670-2019 (O&M)
DECIDED ON: 06.11.2024

PARAMJIT ARORA (DECEASED) TH HIS LRS .....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER .....RESPONDENTS

2.

CWP-8143-2016

M/S MANGAT RAI CONTRACTOR .....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER .....RESPONDENTS

3.

CWP-22225-2017

CHHABRA ENGG. WORKS .....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER .....RESPONDENTS

4.

CWP-22226-2017

CHHABRA ENGG. WORKS .....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER .....RESPONDENTS

5.

CWP-22227-2017

CHHABRA ENGG. WORKS .....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER .....RESPONDENTS

6.
CWP-20899-2017

PREM PAL BATHLA **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER **.....RESPONDENTS**

7.
CWP-15346-2016

M/S MANGAT RAI CONTRACTOR **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

8.
CWP-15352-2016

M/S DAVINDER KUMAR CONTRACTOR **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER **.....RESPONDENTS**

9.
CWP-15400-2016

M/S VIPAN KUMAR CONTRACTOR **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

10.
CWP-15673-2016

M/S RAM PAL CONTRACTOR **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

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

Present: Mr. Puneet Kansal, Advocate, and
Ms. Monika Kansal, Advocate,
for the petitioner(s)
(in CWP-37670-2019, 20899-2017, 22225-2017, 22226-2017 and 22227-2017).

Mr. Rishab Singla, Advocate, and
Mr. Sameesh Bassi, Advocate,
for the petitioner(s)
(in CWP-8143-2016, 15346-2016, 15352-2016, 15400-2016 and 15673-2016).

Mr. Saurabh Kapoor, Addl. AG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

CM-9631-CWP-2023 in CWP-37670-2019

Application moved by the applicant/petitioner under Order 22 Rule 3 of CPC for impleading the legal representatives of the petitioner – Paramjit Arora as party to the present writ petition, is allowed.

Amended memo of parties is ordered to be taken on record.

Main Cases

1. It is stated by learned counsel for the petitioner(s) that in *M/s Keshob Plants vs. Bharat Sanchar Nigam Limited and others* in *CWP-19579-2002* decided on 13.08.2008 (Annexure P-1), Section 10 (C) of the Punjab General Sales Act, 1948 and Rule 25A of the Punjab General Sales Tax Rules, 1949 have been declared unconstitutional.

2. Learned counsel further submits that in one other case *M/s Sahil Builders vs. Bharat Sanchar Nigam Limited and others* in *LPA No.33 of 2009*, order was passed directing for refund of the amount and also to pay

interest on the said amount at the rate of 18% p.a. in terms of Section 12(3) of the Act.

3. Learned counsel submits that while the respondents have refunded the amount in other cases, insofar as this bunch of cases, refund has not been made even till date.

He therefore prays for directing the respondents to refund the amount along with interest.

4. Learned counsel appearing of the State, upon instructions from Narinder Pal Kaur, State Tax Officer (STO), Amritsar-II, admittedly states that while in the case of Amarjeet Singh Bajwa and certain other cases, the amount was refunded, but so far as interest is concerned, the same was to be paid in terms of directions of the Court.

5. In the present bunch of cases, the refund amount could not be paid for the reasons which are not available on record.

6. We have considered the submissions addressed by counsel for the parties.

7. In *M/s Sahil Builders vs. Bharat Sanchar Nigam Limited and others* in *LPA No.33 of 2009*, this Court passed following order:-

> *"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').*
>
> *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 <u>M/s Cobra Instalaciones Y Services v. State of Punjab and others</u> (LPA No. 740 of 2009). In the concluding paras, the Division Bench has held as under:

> *"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."*

In view of the above enunciation of law, the instant appeals are also disposed of in terms of the judgement in <u>M/s Cobra Instalaciones Y Services's case</u> (supra)."

8. Keeping in view thereto, we have no hesitation to hold that once the provision of the Act has been declared *ultra vires,* the same would apply to all the cases and to all the affected persons similarly.

9. The respondents would therefore be obliged to return the amount which has been received in terms of the provisions of Section 10(C) of the Punjab General Sales Tax Act, 1948 and Rule 25A of the Punjab General Sales Tax Rules, 1949, which have been declared *ultra vires* and also in view of the provisions of Article 265 of the Constitution of India.

10. We have also noticed that the respondents had rejected the applications praying for refund. The orders of rejection of refund applications are accordingly set aside.

11. We therefore direct the respondents to pay the amount withheld and the interest shall also have to be paid as per rules till date of payment.

12. Accordingly, these writ petitions are allowed. Respondents are now directed to calculate the interest on the withheld amount from the date the same was required to be returned i.e. from the date Section 10(C) of the Act has been declared *ultra vires,* till date of payment of the said amount, and disburse the same within a period of six weeks from the date of receipt of this order. The refund amount and the interest shall be released and compliance report shall be filed in the Court.

13. Pending miscellaneous application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

06.11.2024
Lavisha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*