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

203 **CWP-4380-2010 (O&M)**
Date of Decision: 22.01.2026

M/S G.S. BUILDERS ...Petitioner

Vs.

STATE OF PUNJAB AND ORS. …Respondents

And

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-4340-2010 (O&M)	M/s Inderjit Bajaj	State of Punjab and Others
3.	CWP-5330-2010 (O&M)	R. Tech Builders	State of Punjab and Others

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present:- Mr. Anurag Chopra, Advocate,
Mr. Vardaan Seth, Advocate and
Mr. Himanshu Bindal, Advocate
for the petitioner *(in CWP-4380-2010 and CWP-5330-2010)*

Mr. Arun Jindal, Addl. A.G. Punjab

Mr. Pankaj Gupta, Sr. Panel Counsel
for respondents No. 2 to 4
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<u>JAGMOHAN BANSAL, J. (ORAL)</u>

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-4380-2010.**

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 23.11.2009 whereby respondents No.2 to 4 have expressed their intention to recover Rs.10,70,328/- from running and final bill.

3. The petitioner is engaged in the business of construction activities. It got contract from respondents No.2 to 4-Rail Coach Factory (for short 'RCF'). It started work. The work carried out by petitioner fell within definition of Works Contract. As per Section 27 of Punjab VAT Act, 2005, the contractee was required to make deduction @ 2% while making payment to the contractor. The deducted amount was required to be deposited with Excise and Taxation Department. The State Government vide notification dated 09.01.2008 increased rate of deduction from 2% to 4%. The contractee-RCF was unaware of enhanced rate of deduction and continued to make deduction @ 2%. The respondent-Excise and Taxation Department vide communication dated 29.09.2009 informed RCF that they are wrongly deducting tax @ 2%. They are required to deduct @ 4% w.e.f. 09.01.2008. RCF by impugned notice informed the petitioner that in view of letters of Excise and Taxation Department, they are going to recover a sum of Rs.10,70,328/- from their running and final bill up to 31.03.2010.

4. Learned counsel for the petitioner submits that it was duty of RCF to make deduction @ 4% w.e.f. 09.01.2008. The petitioner filed its VAT returns disclosing total tax liability. Besides quarterly returns, annual return was filed. The returns stand assessed. The petitioner took credit of amount deducted by RCF. Had RCF deducted tax @ 4%, the petitioner must have availed credit @ 4% whereas credit was availed @ 2% because there was deduction @ 2%.

5. Learned counsel for RCF submits that they have issued impugned notice because there were persistent instructions/letters by Excise and Taxation Department to make deduction @ 4% w.e.f. 09.01.2008. Deduction with respect to past period could be made from running bill, thus, the impugned notice was issued.

6. Learned State Counsel expressed his inability to controvert the fact that petitioner duly filed quarterly as well as annual returns for the period in question. The tax liability was duly assessed and paid by petitioner.

7. On being asked, counsel for RCF as well as State Counsel expressed their inability to clarify whether any penalty under Section 27 of VAT Act, 2005 has been imposed upon RCF qua deduction of tax at lower rate w.e.f. 09.01.2008.

8. We have heard learned counsel for the parties and perused the record.

9. From the perusal of record, it is evident that RCF was deducting tax @2% from the payment made to the petitioner. The State Government increased rate of deduction from 2% to 4% w.e.f. 09.01.2008. RCF was unaware of enhanced rate of deduction, thus, continued to deduct tax @ 2% till 06.10.2009. The petitioner availed credit of tax deducted by RCF. Had RCF deducted tax @4%, the petitioner must have availed credit @ 4%. The petitioner was not an exempt assessee. It was liable to pay tax, thus, bound to file quarterly returns in Form VAT-15 and annual return in form VAT-20. It filed quarterly returns as well as annual returns. The respondent- Excise and Taxation Department assessed tax liability of the petitioner. Non-deduction of TDS by RCF resulted in little delay of payment of tax. Had RCF deducted tax @ 4% instead of 2%, the State must have received differential amount in the month in which payment was made to petitioner. On account of non-

deduction of tax @ 4%, the State received differential revenue when petitioner deposited the same. The petitioner was liable to pay tax on monthly basis, thus, delay in receipt of tax by State Government must be of few days. The object of deduction of tax at source is to ensure and secure payment of tax. The total tax liability which finally had to accrue has already been deposited by petitioner, thus, there is no revenue loss. There may be liability of interest on account of gap between the due date of payment of tax deducted by contractee and date of tax actually paid by contractor. The respondent-Excise and Taxation Department may calculate interest and demand from the person liable to pay interest. There was no mala fide intention and it was mere lapse on the part of RCF which is a Public Sector Undertaking.

10. In the wake of above discussion and findings, we are of the considered opinion that RCF was not required to make deduction of differential amount of tax i.e. tax already deducted and tax required to be deducted from the running bill of the petitioner(s). The petitions stand disposed of with liberty to Excise and Taxation Department to calculate interest, if any, and recover from the person liable to pay. The respondent-RCF shall not make recovery of alleged differential amount from the petitioners.

11. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

January 22, 2026
Deepak DPA

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No