
(2000) 07 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1743 of 2000

Bharat Rice Mills	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 43, 44
Haryana General Sales Tax Rules, 1975 — Rule 53(1)

Citation : (2001) 123 STC 241

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Jaswant Singh D.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for directing the respondents to refund Rs. 46,000 along with interest.

2. There is no dispute between the parties that in relation to the transaction involving export of rice out of India, the Excise and Taxation Officer (Enforcement), Hisar had passed two orders dated November 13, 1998 u/s 37(6) of the Haryana General Sales Tax Act, 1973 (for short, "the Act") and imposed penalties of Rs. 24,000 and Rs. 22,000 respectively upon the petitioner. Those orders were reversed by the Joint Excise and Taxation Commissioner (Appeals), Hisar who allowed the appeals filed by the petitioner. Immediately thereafter, the petitioner submitted application for refund of the amount of penalty. The Deputy Excise and Taxation Commissioner, Hisar (respondent No. 3) forwarded its application to the Deputy Excise and Taxation Commissioner, Jind (respondent No. 2) for taking necessary action because the amount of penalty had been deposited in Jind treasury. However, the latter did not refund the amount to the petitioner. Instead, vide memo, annexure P6 dated January 3, 2000, he informed the representative of the petitioner that papers have been sent to the Excise and

Taxation Commissioner for revision and for withholding of the refund till the decision of the matter at his level.

3. The petitioner has challenged the decision of the respondents to withhold the refund of the penalty amount deposited by it by contending that mere forwarding of the case to the Excise and Taxation Commissioner for revision of the order dated June 1, 1999, passed by the appellate authority is not sufficient for withholding the amount of penalty deposited u/s 39(5) of the Act.

4. The respondents have tried to justify their action by stating that they had done so in view of the reference made by the Excise and Taxation Officer, Jind to the Excise and Taxation Commissioner to revise the order dated June 1, 1999 passed by the appellate authority.

5. We have heard learned counsel for the parties and perused the record. Sections 43 and 44 of the Act and Rule 35(1)(a) of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") which contain the provisions for refund of the excess amount of tax, etc., read as under :

"Sections 43 and 44 of the Act :

43. Refunds--(1) The Assessing Authority or a person appointed to assist the Commissioner under Sub-section (1) of Section 3, as the case may be, shall, in the prescribed manner, refund to a dealer or to any other person the amount of tax or penalty or interest paid by him in excess of the amount due from him under this Act, either by a refund voucher or, at the option of the dealer by adjustment of the amount so paid against the amount due from him in respect of any other period :

Provided that the Assessing Authority or a person appointed to assist the Commissioner under Sub-section (1) of Section 3, as the case may be, shall first adjust the amount to be refunded towards the recovery of any amount due, on the date of adjustment from the dealer and shall then refund the balance, if any.

(2) Where an amount required to be refunded by the Assessing Authority to any person by virtue of an order issued under this Act is not so refunded to him within the period as may be prescribed, the dealer shall be entitled to interest at such rates and on such terms and conditions as may be prescribed.

44. Power to withhold refund.--(1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and Assessing Authority or a person appointed to assist the Commissioner under Sub-section (1) of Section 3, as the case may be, is of the opinion that the grant of the refund is likely to adversely affect the recovery, he may withhold the refund and refer the case to the Commissioner for order. The orders passed by the Commissioner shall be final.

(2) The period during which the refund remains so withheld shall be excluded for the purpose of calculation of interest u/s 43."

Rule 35(1)(a) of the Rules :

"While framing the assessment of a dealer, the Assessing Authority shall, after such scrutiny of its record and after making such enquiries as it considers necessary, determine the amount paid by him, in excess, if any, and thereafter direct the refund of such amount as may remain after deducting any amount due from him. The Assessing Authority, shall then issue to the dealer at his option a refund payment order in form S.T.R. 34 prescribed under the Punjab Subsidiary Treasury Rules or refund adjustment order in form S.T. 34 and send it along with the assessment order."

6. A conjoint reading of the provisions quoted above shows that the Assessing Authority is under an obligation to refund the amount of tax, penalty or interest paid by the dealer either by way of refund voucher or at the option of the dealer by adjustment of the amount so paid against the amount due from him in respect of any other period. This is subject to the exercise of discretion by such authority to first adjust the amount to be refunded towards the recovery of any amount due from the dealer on the date of adjustment and then refund the balance. Section 44 of the Act provides for withholding of the refund if the order pursuant to which refund is claimed becomes subject-matter of the appeal or any other proceedings made under the Act and the competent authority is of the opinion that grant of the refund would adversely affect the recovery.

7. In the case in hand, the respondents have neither pleaded nor they have produced any evidence to show that an order u/s 44 has been passed by the competent authority for withholding refund of the amount due to the petitioner. Rather, they have justified the action of the Assessing Authority on the premise that a reference has been made to the Excise and Taxation Commissioner for taking suo motu action to revise the order of the Appellate Authority. In our considered view, such reference cannot ipso facto entitle the competent authority to withhold the refund. This view of ours finds support from the order dated April 8, 1997 passed in C.W.P. No. 2647 of 1997 [Bhasin Associates v. State of Haryana [1998] 109 STC 109 (P&H)].

8. Hence, the writ petition is allowed. The respondents are directed to refund the amount of penalty deposited by the petitioner with interest at the rate of 12 per cent per annum. The interest shall be calculated for the period between June 1, 1999 and the date of actual payment. The respondents are also given liberty to adjust the amount to be refunded to the petitioner together with interest against any other outstanding demand within one month from the date of receipt/ submission of a copy of this order.