(2000) 11 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 13094 of 2000

Diamond Cycle (P.) Ltd. APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 43, 44
Haryana General Sales Tax Rules, 1975 — Rule 35(1)

Citation : (2001) 123 STC 353

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

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Palika Monga, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing the respondents to refund Rs. 22,000 with interest.

2. A perusal of the averments made in the writ petition and the contents of the annexed documents show that by an order dated August 17, 1999 (annexure P1), the Joint Excise and Taxation Commissioner (Appeals), Hisar, set aside the penalty imposed upon the petitioner by the Assessing Authority under the Haryana General Sales Tax Act, 1973. Thereafter, the petitioner submitted application dated September 18, 1999 to the Assessing Authority for refund of Rs. 22,000 deposited at the time of filing of appeal. After about nine months, it''s representative submitted representation, annexure P3, dated June 14, 2000 to the Deputy Excise and Taxation Commissioner, Rohtak, for refund of Rs. 22,000 with interest. Having failed to evoke any response either from the Assessing Authority or from the Deputy Excise and Taxation Commissioner, Rohtak, the petitioner submitted representation, annexure P4, dated September 11, 2000 to the Prohibition, Excise and Taxation Commissioner, Haryana, for directing the

concerned authority to refund the amount in view of the law laid down by the High Court in Punjab State University Text Book Board Vs. State of Punjab and Others, , Ram Singh Jaspal Singh Vs. State of Haryana and Another, , Jindal Strips Limited v. State of Haryana [1996] 100 STC 337 (P&H), Chemiplast Industries v. State of Haryana [1997] 104 STC 469 (P&H) and OPK Woollen Mills (P) Ltd. v. State of Punjab [1998] 110 STC 481 (P&H).

3. Shri Avneesh Jhingan, counsel for the petitioner, relied on the order dated July 6, 2000 passed in C.W.P. No. 1743 of 2000 Bharat Rice Mills Vs. State of Haryana and Others, and argued that in the absence of any order passed by the competent authority for withholding the refund, the respondents are bound to release the amount of Rs. 22,000 along with interest.

4. Learned Assistant Advocate-General has not been able to put forward any tangible reason as to why the Deputy Excise and Taxation Commissioner, Rohtak, has not refunded the amount due to the petitioner.

5. We have considered the arguments of the learned counsel for the petitioner. 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.

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. We, therefore, hold that failure of the respondents to refund the amount of Rs. 22,000, which became payable to the petitioner as a result of quashing of the order of penalty has resulted in violation of its right to property.

8. Hence, we allow the writ petition and direct the respondents to refund Rs. 22,000 to the petitioner with interest at 12 per cent per annum from expiry of 60 days calculated from the date of submission of application dated September 18, 1999 to the Assessing Authority.

