

(1991) 08 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 3297 of 1990

Haryana Drinks Private Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 42, 44

Citation : (1993) 88 STC 332

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : R.P. Sawhney, for the Appellant; L.P. Sood, Assistant Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—The petitioner is a private limited company and is working as a dealer registered under the Haryana General Sales Tax Act, 1973 as also Central Sales Tax Act, 1956 (hereinafter to be referred as "the Act" and "the Central Act") with respondent No. 2 at Rohtak in the State of Haryana. The Deputy Excise and Taxation Commissioner, Rohtak, made the assessment against the petitioner-company under the Act as also under the Central Act for the year 1983-84 creating additional demand of tax amounting to Rs. 6,57,825. In the same manner, assessment for the year 1984-85 was also made by the said authority once again creating additional demand of tax under both the Acts amounting to Rs. 10,59,006. The petitioner paid both the amounts aforesaid but carried an appeal against the said orders before the Joint Excise and Taxation Commissioner (Appeals), Rohtak. The same, however, did not find favour with the said authority, thus, constraining the petitioner to file second appeal before the Sales Tax Tribunal, Haryana by means of four separate appeals. The Tribunal vide orders dated October 18, 1989, allowed all the appeals and passed a consolidated order reflected in annexure P1.

2. After the appeals were allowed, the petitioner filed applications annexures P2,

P2(a), P2(b) and P2(c) before the assessing authority, i.e., respondent No. 2 and legitimately prayed that inasmuch as its appeals had since been allowed and the additional liability created against it had since been set aside it should be paid the amount that it had to pay per force of orders passed by the Deputy Excise and Taxation Commissioner. The aforesaid applications were filed on October 31, 1989 but when the petitioner did not hear for a long time, he sent reminder on December 26, 1989. Instead of making refund, the Excise and Taxation Commissioner, Haryana, vide orders dated April 15, 1990 withheld the refund amounting to Rs. 16,61,802.80 on the ground that proceedings under the Haryana General Sales Tax Act were still pending against the petitioner as also on the ground that the refund would adversely affect the recovery of the amount later on. The aforesaid order was passed under the provisions of Section 44 of the Act. In fact the petitioner had filed the present writ petition asking for refund prior to the passing of the order aforesaid and it appears that during the pendency of petition, the said order was passed necessitating the petitioner to amend the petition and challenge the order on various grounds.

3. Written statement on behalf of respondent No. 2 has been filed and order, annexure P4, vide which the Commissioner had stayed the refund is sought to be justified only on the strength of Section 44 of the Act.

4. Mr. R.P. Sawhney, learned counsel for the petitioner, vehemently contends that provisions of Section 44 are ultra vires of the Constitution of India as also that order annexure P4 is bad in law for the same was passed at the back of petitioner and without hearing him and also that refund could not be stayed in any manner under the provisions of Section 44 of the Act. Mr. S.K. Sood, District Attorney, Haryana, contests the claim of the petitioner.

5. After hearing the learned counsel for the parties, I am of the considered view that this petition must succeed on the ground that on allowing of appeals, the concerned authorities were duty-bound to refund the tax. Section 42 of the Act deals with reference against the orders passed by the Tribunal. Sub-section (7) of Section 42 clearly says that the payment of the amounts, if any, of the tax due in accordance with the order of the Tribunal, in respect of which an application has been made under Subsection (1), shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as a result of such references, the excess tax paid shall be refunded in accordance with the provisions of Section 43. If in a reference against the orders passed by the Tribunal, the recovery of the amount cannot be stayed then it shall equally follow that if the order passed by the Tribunal is with regard to refund, the same also cannot be stayed, under the provisions of Section 44 of the Act. The matter is not res integra and stands clinched in favour of the petitioner by a Division Bench judgment of this Court rendered in Punjab State University Text Book Board Vs. State of Punjab and Others, . When the petitioner craves for refund on setting aside of orders creating liability, the authorities cannot be permitted to take shelter behind the fact that it had moved

rectification applications before the Tribunal. In absolutely identical facts, the petitioner was held entitled to the refund of tax and the statutory interest accrued thereon.

6. In view of what has been stated above, it is not necessary to go into other contentions raised by Mr. Sawhney and in particular constitutional validity of Section 44 of the Act. The petitioner is entitled to the refund of tax and the statutory interest. If and when the rectification is allowed, the authorities can claim it back in accordance with law. This petition is, thus, allowed and the respondents are directed to refund Rs. 16,61,802.80 forthwith. The petitioner shall also be entitled to interest worked out at the rate of 12 per cent per annum for the first month when the amount became due to be paid, i.e., from the date when the respondents allowed the appeal of the petitioner and at the rate of 18 per cent per annum thereafter. The petitioner shall also be entitled to the costs which are quantified at Rs. 2,000.