
(2007) 09 P&H CK 0125
In the Punjab And Haryana At Chandigarh

Sadhu Overseas	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Constitution of India, 1950 — Article 226

Citation : (2008) 149 PLR 30 : (2008) 12 VST 19

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The right to payment of refund as well as payment of interest on delayed refund has once more been raised in these two petitions (C.W. P. Nos. 6555 of 2007 and 11149 of 2007) filed by M/s. Sadhu Overseas (for brevity, "the assessee-petitioner") by invoking the writ jurisdiction of this Court under article 226 of the Constitution. It has been prayed that direction be issued to the respondent-State to refund Rs. 5,38,802 in respect of assessment year 1999-2000 along with interest. It has further been prayed that direction be also issued to the respondents to pay interest on delayed refund of Rs. 2,54,782 in respect of assessment year 1998-99. Still further, a prayer has been made for quashing the order dated June 7, 2007, passed by the Excise and Taxation Commissioner, Haryana, granting approval for withholding of refund of Rs. 5,38,780 on the ground that proceedings under the Haryana General Sales Tax Act, 1973 were still pending against the assessee.

2. The assessee-petitioner was a registered dealer under the Haryana General Sales Tax Act, 1973 (for brevity, "the Act") as well as the Central Sales Tax Act, 1956 (for brevity, "the 1956 Act"). Subsequently, it has been registered, after the repeal of the Act, under the Haryana Value Added Tax Act, 2003 (for brevity, "the VAT Act"). The assessee-petitioner is engaged in the business of sale, purchase and export of iron/steel as also cotton knitted T Shirts. The assessee-

petitioner filed statutory returns for the assessment year 1999-2000. The assessment was finalised by the Assessing Authority vide order dated August 16, 2001 and it was found that the assessee-petitioner had paid excess amount of Rs. 1,83,573 under the Act. There was "nil" demand under the 1956 Act. Exercising the revisional power u/s 40 of the Act read with Section 9(2) of the 1956 Act, the Revisional Authority, i.e., Deputy Excise and Taxation Commissioner, vide its order dated October 29, 2002, revised the assessment order noticing that the Assessing Authority did not include a turnover of Rs. 53,67,802 paid by the assessee-petitioner during the course of inter-State trade and commerce to different parties of Delhi/Ghaziabad in respect of DEPB licences during the year for which the assessment was framed. Accordingly, an additional demand of Rs. 5,38,780 was raised (P 1).

3. The assessee-petitioner then filed an appeal before the Haryana Tax Tribunal, Chandigarh (for brevity, "the Tribunal"), which was allowed vide order dated October 21, 2003, setting aside the order of the Revisional Authority (P2).

4. Thereafter the assessee-petitioner filed an application for refund of excess tax deposited by it for the assessment year 1999-2000. During the pendency of the said application, reassessment proceedings were again initiated for the aforementioned assessment year and the Assessing Authority again taxed DEPB licences and raised an additional demand of Rs. 5,38,802 vide order dated July 14, 2004 (P 3). An appeal was filed by the assessee-petitioner before the Joint Excise and Taxation Commissioner (A), Faridabad, against the order dated July 14, 2004, which was allowed vide order dated June 13, 2006, setting aside the order of the Assessing Authority (P4). The assessee-petitioner then again applied for refund vide application dated September 5, 2006 (P 5). However, the respondents failed to refund amount of Rs. 5,38,802 in respect of assessment year 1999-2000.

5. At this stage it is appropriate to notice that in respect of assessment year 1998-99, assessment proceedings were finalised on April 21, 2000 and the Assessing Authority, Faridabad, ordered refund of Rs. 3,79,523. However, the Revisional Authority-cum-Deputy Excise and Taxation Commissioner (I), Faridabad, revised that order in suo motu proceedings and ordered inclusion of turnover of Rs. 25,47,818 and levied tax at 10 per cent by observing that the DEPB licences were sold by the assessee to the importers. The Revisional Authority ordered for levy of Rs. 2,54,782 as tax on the assessee-petitioner for the assessment year 1998-99, vide order dated October 29, 2000 (P 6). Against the aforementioned order, the assessee-petitioner preferred an appeal before the Tribunal in respect of the assessment year 1998-99, which was allowed by the Tribunal vide its order dated October 21, 2003 (P 2). The respondent refunded the amount in respect of assessment year 1998-99 on April 6, 2007 after almost three years without payment of interest. Accordingly, the assessee-petitioner has claimed payment of interest on the delayed payment of the refund amount of Rs. 2,54,782 in respect of assessment year 1998-99. In that regard it is claimed that

the assessee-petitioner also sent a reminder on April 16, 2007 (P 8). In these circumstances, the assessee-petitioner filed C.W.P. No. 6555 of 2007 in this Court on May 1, 2007.

6. During the pendency of C.W.P. No. 6555 of 2007, the Excise and Taxation Commissioner, Haryana, while invoking power u/s 44 of the Act, passed an order dated June 7, 2007, granting approval to the withholding of the refund amount of Rs. 5,38,780 (Rs. 5,38,802?). The aforementioned order dated June 7, 2007, is subject-matter of challenge in C.W.P. No. 11149 of 2007.

7. In the short reply dated July 23, 2007, filed by the respondents in C.W.P. No. 6555 of 2007, it is claimed that the Tribunal has not gone into the merits of the case while passing order dated October 21, 2003 but allowed the appeals of the assessee-petitioner on the point of jurisdiction only. It has further been asserted that the respondent-State has sought review of order u/s 9(2) of the 1956 Act read with Section 41(1) of the Act and the case was fixed for July 25, 2007. Copies of the review applications have been placed on record as annexures R 1 and R 2.

8. It is apposite to notice that in C.W.P. No. 11149 of 2007, a short affidavit has been filed on behalf of the respondents wherein contents of the written statement filed in another case bearing C.W.P. No. 6100 of 2007 *Punj Lloyd Limited v. State of Haryana* have been adopted claiming that the contents of C.W.P. No. 11149 of 2007 are *pari materia* to that of C.W.P. No. 6100 of 2007, wherein action of the respondents under the Local Area Development Tax Act, 2000 was under challenge.

9. The primary point that requires our attention as regards refund of Rs. 5,38,780 relating to the assessment year 1999-2000 is concerned is whether the action of the respondent in passing an order u/s 44 of the Act is legal and valid. It is beneficial to reproduce Section 44 which reads thus:

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 the 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.

10. A plain reading of Section 44 reproduced above brings out a situation in which the State is authorised to retain the amount of refund to protect the interest of the Revenue till the finalisation of the proceedings under the Act. In the facts as narrated in C.W.P. No. 11149 of 2007 in para 13 it has specifically been pleaded that the turnover of the petitioner for the three years and the

entitlement for the refund of these three years is as under:

Year Turnover Refund amount 2004-05 Rs. 10,33,53,262 Rs. 31,75,823 2005-06 Rs. 12,46,56,607 Rs. 30,66,047 2006-07 Rs. 13,05,43,774 Rs. 31,54,024

11. The aforesaid factual position has not been controverted by the State either in the reply filed or during the course of arguments. In the light of the aforesaid facts, it cannot be concluded that refunding of the amount of Rs. 5,38,780 for the assessment year 1999-2000 in any manner shall prejudice the State interest. The order passed on June 7, 2007 granting approval for withholding of refund of Rs. 5,38,780, thus, cannot legally be sustained. Accordingly, the order dated June 7, 2007 is quashed.

12. Once order of withholding of refund of Rs. 5,38,780 for the assessment year 1999-2000 is held to be invalid, the next question which requires determination is whether the petitioner is entitled for interest on the amount of refund.

13. We find that the matter is not *res integra* and the same is squarely covered by a Division Bench judgment of this Court in the case of *Ratti Woollen Mills Vs. State of Punjab and Others*, , of which one of us (M.M. Kumar, J.) is a member, as well as our judgment rendered in the case of *Escotel Mobile Communication Ltd. Vs. State of Haryana and Another*, In the aforementioned cases, all the issues raised in the present petitions have already been minutely considered and decided in favour of the assessee-petitioner(s). It is needless to mention here that in the cases of *Ratti Woollen Mills Vs. State of Punjab and Others*, and *Escotel Mobile Communication Ltd. Vs. State of Haryana and Another*, the entire case law and various provisions of the Act and the Haryana General Sales Tax Rules, 1975, pertaining to refund and payment of interest on delayed payment of refund, have already been dealt with. Therefore, we see no necessity to again discuss the same in the present proceedings.

14. In light of the above mentioned, we allow these petitions being squarely covered by the judgments of this Court in the cases of *Ratti Woollen Mills Vs. State of Punjab and Others*, and *Escotel Mobile Communication Ltd. Vs. State of Haryana and Another*, . The impugned order dated June 7, 2007, passed by the Excise and Taxation Commissioner, Haryana, is set aside. The respondents are directed to refund Rs. 5,38,802 in respect of assessment year 1999-2000 along with interest to the assessee-petitioner. The assessee-petitioner is further held entitled to interest on delayed payment of refund of Rs. 2,54,782 in respect of assessment year 1998-99. The interest shall be calculated at the rate of 12 per cent per annum in respect of delay for the first month of delay and at the rate of 18 per cent per annum in respect of delay caused for the subsequent months. The needful shall be done within a period of one month from the date of receipt of a certified copy of this order. The assessee-petitioner is also held entitled to payment of costs of Rs. ten thousand in each of the petition.

15. The writ petitions stand disposed of in the above terms.