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(2010) 06 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No''s. 6555 and 11149 of 2007

Sandhu Overseas APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 44

Citation : (2011) 45 VST 244

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Ritu Bahri, Senior Deputy Advocate-General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of C.W.P. No. 6555 of 2007 and C.W.P. No. 11149 of 2007. The matter has been placed before us in the light of the order of the honourable Supreme Court dated September 18, 2009, inter alia, to the following effect: In our view, the High Court was required to analyse section 44(2) in the context of the facts of these cases. This has not been done. Hence, we set aside the impugned judgment and remit the cases to the High Court for de novo consideration in accordance with law.

The petitioner is a registered dealer under the provisions of the Haryana General Sales Tax Act, 1973 (for short, "the Act"). As a result of the order dated October 21, 2003, passed by the Haryana Tax Tribunal, relating to the assessment year 1999-2000, the petitioner became entitled to refund of excess tax deposited by it. The petitioner sought the said refund and on not being successful, filed this petition. During the pendency of the petition, order dated June 7, 2007 was passed u/s 44 of the Act, withholding the amount of refund on the ground that the State will be adversely affected if refund was made. The said order was challenged by the petitioner by filing C.W.P. No. 11149 of 2007. Contention raised on behalf of the petitioner was that the finding that State will be adversely affected by making refund, was without any factual or legal basis, as even for subsequent assessment years, i.e., assessment years 2004-05, 2005-06 and 2006-07, refund of about Rs. 94 lacs was due, which was not disputed by the State. The factual aspect, as mentioned above, having not been disputed, this court in order dated September 28, 2007'' held (at page 24 of 12 VST):

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.

Once the 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.

2. On appeal being filed by the State, the matter has been remanded to consider the effect of section 44(2) of the Act, as mentioned above. However, the honourable Supreme Court directed the Department to refund the amount, which according to the petitioner has since been made.

3. We have heard learned counsel for the parties on the question of applicability of section 44(2) of the Act.

4. According to learned counsel for the petitioner, section 44(2) can apply only when a valid order is passed u/s 44(1). This submission could not be disputed by learned counsel for the State.

5. Section 44 of the Act is as under:

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 be 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.

6. It is clear from bare perusal of the above provision that section 44(2) providing for exclusion of period during which refund was withheld for calculation of interest applies only if withholding of refund was valid. Once withholding of refund is held to be illegal, section 44(2) of the Act cannot be held to be applicable. In the present case, withholding of refund is not shown to be for a

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valid reason. Once it is so, section 44(2) of the Act had no application.

7. We, accordingly, hold that section 44(2) of the Act will not apply in the present case. The period during which refund was withheld, cannot be excluded for calculation of interest u/s 43 of the Act. The petitions are allowed accordingly. In view of above, the amount due may, accordingly, be calculated and paid to the petitioner within a period of three months from the date of receipt of a copy of this order.

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