(2016) 02 P&H CK 0253

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2925 of 2016

S.M. Constructions, Ludhiana — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:
Constitution of India, 1950 — Article 226, Article 227
Haryana Value Added Tax Act, 2003 — Section 24, Section 27

Citation : (2016) 02 P&H CK 0253

Hon'ble Judges : Ajay Kumar Mittal and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Aman Bansal, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J.—1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to issue the certificate of no deduction and for restraining from initiating any action on various clients of the petitioner for not effecting TDS in view of the judgment dated 26.10.2010 (Annexure P-2) passed by this Court. Further, a writ of mandamus has been sought directing the respondents to refund the excess TDS.

2. The petitioner is engaged in construction business and undertakes execution of works, contracts for different persons including Public Sector Undertaking, State and Central Government Departments. One letter of intent dated 2.12.2015 (Annexure P-1) has been issued in the name of the petitioner by Adani Logistic Limited, Gurgaon for the civil works for Multi Model Logistic Park at Killaraipur, Ludhiana. The petitioner is duly registered with the respondent-department under the Value Added Tax Act, 2005 (in short "the Act") having Registration No. 03812113480. This Court in CWP No. 14797 of 2010 (Larsen and Toubro Limited v. State of Haryana and others) decided on 26.10.2010 (Annexure P-2) wherein validity of statutory provisions of sales tax law in Punjab

and Haryana for deduction of tax at source out of payment made to contractors for execution of works contracts involving transfer of property in goods at specified rate was challenged, had held Section 27 of the Act and Section 24 of the Haryana Value Added Tax Act, 2003 as ultra vires as it did not provide any mechanism for the exclusion of labour component or interstate sales or sales outside the State or sales in the course of imports from the value of works contract while deduction of tax, but instead of striking down the provisions, this Court had decided on the proposal of the petitioners that the said Sections would be applicable only to the taxable turnover, i.e. after deducting service component and turnover relating to sales outside State in the course of inter-state sales or in the course of import. The had filed its returns on time as is discernible from the refund vouchers (Annexure P-3). The petitioner requested the concerned officers for issuance of certificate of no deduction to contractee, but to no effect. Thereafter, the petitioner sent a representation dated 18.1.2016 (Annexure P-4) to respondent No. 3, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved a representation dated 18.1.2016 (Annexure P-4) to respondent No. 3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No. 3 to take a decision on the representation dated 18.1.2016 (Annexure P-4), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

