(2001) 08 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15955 of 2000

Sneh Builders (P) Ltd. APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 25
Haryana General Sales Tax Rules, 1975 — Rule 35

Citation : (2002) 125 STC 32

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Palika Monga, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The sales-tax assessment for the year 1989-90 was finalised by the respondent-authority on July 10, 1992. An amount of Rs. 1,05,832/- had become due to the petitioner on account of refund. This amount was not paid to the petitioner. It represented. Having failed to receive a reply, the petitioner has approached this Court through the present writ petition. It prays that a writ of mandamus be issued directing the respondents to refund the amount alongwith interest.

2. A written statement has been filed on behalf of the respondents. It has been inter alia averred that the refund was not given to petitioner as it had failed to exercise its option in respect of the amount due to it in terms of Rule 35 of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as the ''Rules''). Still further, it has been averred that the amount of Rs. 44,938/- which was found due from the petitioner, was adjusted towards its account. A Refund/ Adjustment Order for Rs. 60,874/- was issued to the petitioner on March 23, 2001.

3. Mr Jhingan, learned counsel for the petitioner submits that an amount of Rs.

44,938/- was adjusted in respect of the assessment year 1988-89. The refund of the amount of Rs. 60,874/- should have been made immediately on the passing of the order dated July 10, 1992. Since nothing was due from the petitioner on that day, the respondent/Authority had to make the refund and the petitioner was not required to exercise any option. Still further, the counsel points out that on receipt of the assessment order the petitioner had made a representation on August 31, 1992 for the refund of the amount. Despite this request, the payment was not made. Even a reminder was issued on June 7, 1999. Still nothing was done. It is only after the filing of the petition that the amount of Rs. 60,874/- has been refunded to the petitioner-assessee. On these premises, the counsel submits that the respondents should pay the interest.

4. The claim made on behalf of the petitioner has been controverted by Ms. Patika Monga. She submits that since the petitioner had not exercised its option in terms of Rule 35 of the Rules, no interest could be awarded.

5. Admittedly, a demand for Rs. 44,938/- only had been raised against the petitioner in respect of the assessment year 1988-89. Still further, it is the admitted position that an amount of Rs. 1,05,832/- was due to the petitioner in respect of the assessment year 1989-90. The Department had automatically made the adjustment for Rs. 44,938/-. Thereafter the amount of Rs. 60,874/- should have been refunded to the petitioner immediately.

6. Ms. Palika Monga contends that the petitioner had failed to exercise option in terms of Rule 35 of the Rules.

7. A perusal of Rule 35 shows that the Assessing Authority has to directly refund the amount which "may remain after deducting any amount due from" the assessee. It is the admitted position that on July 10, 1992, the amount of Rs. 1,05,832/- was due to the petitioner. It is also not disputed that the demand of Rs. 44, 938/- was also made at the same time. Thus, the amount of Rs. 60,874/- had to be refunded to the petitioner. After the passing of the order of assessment, which was conveyed to the petitioner on August 25, 1992, there was no outstanding amount, which may be due from the assessee. In terms of Rule 35, it was incumbent upon the Assessing Authority to direct the refund of the amount of Rs. 60,874/-. It has failed to do so.

8. The assessee can be called upon to exercise an option for refund or adjustment only if there is some amount due from it. In a case where nothing is due, the question of adjustment or option cannot arise. In the very nature of things, the refund must follow. In the present case, the Authority has failed to give a direction in terms of Rule 35. Resultantly, the petitioner is entitled to the payment of interest.

9. Another fact which deserves notice is that in paragraph 6 of the petition, there is categorical averment that the petitioner had written to the Department vide letter dated August 31, 1992 that the amount may be refunded. This averment has not been clearly denied in the written statement filed on behalf of the

respondents. It has not been stated that the letter was not received. Still further, the petitioner had given a reminder on June 7, 1999. Nothing was done. It is only after the filing of the petition that the amount of Rs. 60,874/- was refunded to the petitioner.

10. In view of the above, it is clear that the petitioner is entitled to the payment of interest as per the provisions of Section 25 of the Haryana General Sales Tax Act, 1973 from the date the refund became due till the date of actual payment viz. March 23, 2001. The respondents are directed to make the payment within one month from the date of receipt of a copy of this order.

11. The petition is accordingly allowed.

12. No costs.

Sd/- Ashutosh Mohunta, J.

