

(2013) 02 P&H CK 0031

High Court Of Punjab And Haryana At Chandigarh

Case No: VAT Appeal No. 14 of 2012 (O and M)

Enexco Teknologies India Ltd.

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Feb. 12, 2013

Citation: (2013) 65 VST 66

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Sandeep Goyal, for the Appellant; Mamta Singhal Talwar, Additional Advocate-General, Haryana, for the Respondent

Final Decision: Disposed Off

Judgement

Ritu Bahri, J.

This appeal u/s 9(2) of the Central Sales Tax Act, 1956 read with section 36(1) of the Haryana Value Added Tax Act, 2003, is against the order dated March 17, 2010 (annexure P5) passed by the Haryana Tax Tribunal. The present appeal is being filed on the following question of law:

Whether the learned Tribunal was justified in upholding the levy of interest on an amount of Rs. 17,42,025 without excluding the amount of Rs. 7,93,769 which was credited in excess as tax in the company's account?

2. The appellant-company had been availing of tax benefit on deferment of payment of tax for seven years with effect from May 31, 1996 to May 30, 2003. The company was allowed deferment of tax to the tune of Rs. 75,22,744 in the year 2000-01. This was converted into interest-free loan against the company after giving it credit of the payment of said amount as tax vide G. M. District Industries, Gurgaon, memo dated March 28, 2002. However, on the assessment for the year 2000-01 the tax liability was quantified as Rs. 67,28,975 vide order dated August 25, 2004. An amount of Rs. 7,93,769 was credited in excess as tax in the company's account. This amount of Rs. 7,93,769 was paid by Department of Industries to the Excise and

Taxation Department. This amount was refunded by the Excise and Taxation Department, to the Department of Industries on March 31, 2006. The petitioner-company immediately deposited the said amount on April 10, 2006 in the Government treasury.

3. While making the assessment vide assessment order dated February 19, 2007 (annexure A1) for the year 2003-04 the total amount due from the company was found to be Rs. 17,42,025. This amount was further reduced to Rs. 11,89,745 vide order dated June 18, 2007 (annexure A2). The Assessing Authority has charged the interest amounting to Rs. 7,13,866 on Rs. 17,42,025 without setting off an amount of Rs. 7,93,769 which was credited in excess as payment of tax in the company's account. This interest-free loan had been retained by the Excise and Taxation Department from G.M., District Industries, Gurgaon, since 2002 and was refunded to the Department of Industries on March 31, 2006. The appellant-company immediately deposited the said amount in Government treasury on April 10, 2006. While passing the assessment order for the year 2003-04 on February 19, 2007, this amount should have been set off against amount of tax of Rs. 17,42,025 first and thereafter interest should have been calculated. The appellant cannot be made liable to pay interest for the interest-free loan of Rs. 7,93,769 which was retained by the Excise and Taxation Department till March 31, 2006. This amount could be adjusted in the assessment year 2003-04 as the company was availing of tax deferment for seven years from May 31, 1996 to May 31, 2003. The Tribunal has rejected the case of the appellant on the ground that after the deferment period was over on May 31, 2003 the Department was competent to charge interest in accordance with provisions of section 14(3) and 14(4) of the Haryana Value Added Tax Act and there is no provision for adjustment of any tax credit in excess in company's account.

4. The amount of tax assessed has now been reduced to Rs. 11,89,745 by rectification order dated June 18, 2007 (annexure A2). The fact that the Excise and Taxation Department had returned Rs. 7,93,769 to Industries Department and thereafter it was credited in the account of the company vide memo dated March 31, 2006. This amount was deposited by the appellant on April 10, 2006. This amount has to be adjusted towards the final tax due for the assessment year 2003-04. The Assessing Authority shall have to recalculate the payment of interest after adjusting the amount of Rs. 7,93,769 which was paid back by the Industries Department to the appellant on March 31, 2006 after receiving it back from the Department of Excise and Taxation. Thus, the Tribunal was not justified in upholding levy of interest on the amount received in excess by the Excise and Taxation Department. The order dated March 17, 2010 (annexure A5) is set aside and the matter is remanded back to the Assessing Authority to re-calculate the interest for the period, the amount of tax required to be deposited and the date of deposit by excluding the period of excess amount received by the Excise and Taxation Department. Accordingly, the instant appeal is disposed of.