
(2005) 07 P&H CK 0047

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No"s. 17062, 17063, 17064, 17065 and 18536 of 2004

Jai Bharat Trading Co.

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 12, 2005

Acts Referred:

- Central Sales Tax Act, 1956 - Section 3
- Punjab General Sales Tax Act, 1948 - Section 10(6), 11(D), 12, 12(1), 12(3)

Citation: (2006) 147 STC 19

Hon'ble Judges: D.K. Jain, C.J; Hemant Gupta, J

Bench: Division Bench

Advocate: G.R. Sethi and Suvir Sehgal, for the Appellant; Nirmaljit Kaur, Additional Advocate-General, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

Civil Writ Petition Nos. 17062, 17063, 17064 and 17065 of 2004 have been filed by a registered dealer under the Punjab General Sales Tax Act, 1948 (hereinafter to be referred as "the Act"). All these writ petitions and Civil Writ Petition No. 18536 of 2004 raise identical questions of law, therefore, all these petitions are being decided together by a common order.

C.W.P. No. 17062 of 2004:

2. The assessment for the financial year 1982-83 in respect of petitioner in CWP No. 17062 of 2004 was finalised on February 4, 1985 and demand of Rs. 2,54,366 was raised by the Assessing Authority. Vide separate order dated July 26, 1985 the learned Assessing Authority imposed penalty of Rs. 26,000 u/s 10(6) of the Act and also made the petitioner liable to pay interest u/s 11-D of the Act for non-depositing the tax worth Rs.

2,54,366. The order of penalty was set aside by the learned Deputy Excise and Taxation Commissioner (Appeals) on May 26, 1993 whereas the order of the Assessing Authority on all other points including levy of tax was upheld. It appears that the matter was taken in further appeal to the Sales Tax Tribunal which dismissed the appeal on March 29, 1994. The petitioner moved an application for reference on substantial question of law for opinion to this Court including the question of levy of interest on the basis of return filed. The learned Tribunal vide order dated April 22, 1996 ordered the reference application to be treated as rectification application and ordered that the petitioner shall not be liable to pay any interest for the assessment year 1982-83.

3. The above sequence of events show that the order of penalty was set aside by the learned appellate authority on May 26, 1993 and that the said order has attained finality. The refund of Rs. 26,000 deposited as penalty was made on July 16, 2004. The petitioner vide application dated September 29, 2004 claimed interest on the amount of Rs. 26,000 from May 26, 1993 till the date of payment.

C.W.P. No. 27063 0/2004:

4. In this writ petition, vide order dated July 26, 1985 a demand of Rs. 24,816.23 was raised by the Assessing Authority for the assessment year 1983-84. The said demand included penalty of Rs. 4,300 u/s 10(6) of the Act and interest of Rs. 8,372 u/s 11-D of the Act. The Deputy Excise and Taxation Commissioner (Appeals) vide order dated April 6, 1993 quashed the penalty of Rs. 4,300 and remanded the case to the Assessing Authority for the revaluation of the closing stock. The matter was taken in appeal before the Sales Tax Tribunal. The appeal was decided by the Sales Tax Tribunal on February 17, 1994 whereby the petitioner was found entitled to concession in interest qua addition to purchase turnover on account of market fee. The application of the petitioner for rectification of the order passed by the learned Tribunal was accepted on May 26, 1997 wherein it was held that interest was not to be charged from the petitioner. It is the claim of the petitioner that, thus, he has become entitled to refund of tax of Rs. 9,268 as well as penalty of Rs. 4,300 along with interest. It is further stated that refund voucher of Rs. 12,672 has been issued to the petitioner on July 21, 2004. Thereafter, the petitioner made a claim for interest in terms of Section 12(3) of the Act.

C.W.P. No. 27064 0/2004:

5. In this writ petition, a demand of Rs. 2,22,147.84 for the assessment year 1988-89 was raised by the Assessing Authority on November 23, 1992. The said amount was deposited on December 22, 1992. It included penalty of Rs. 15,000 in terms of Section 10(6) of the Act and a sum of Rs. 84,255 as interest in terms of Section 11-D of the Act. The Deputy Excise and Taxation Commissioner (Appeals) vide order dated August 26, 1993 quashed the penalty of Rs. 15,000 and remanded the case to the Assessing Authority for passing appropriate orders on the point of market fee and rural development fund. The appeal against the order passed by the Deputy Excise and Taxation

Commissioner (Appeals) was dismissed on April 30, 1996 by the Sales Tax Tribunal being barred by limitation. The application for rectification filed by the petitioner u/s 21-A of the Act on the ground that interest is not payable for the period prior to assessment was dismissed by the Tribunal on August 19, 1999 with the observation that the Assessing Authority will take note of the applicable law. It is further stated that on July 30, 2004 the petitioner has received refund voucher of Rs. 15,000. The petitioner claimed interest u/s 12(3) of the Act from August 26, 1993 till the date of payment.

C. W.P. No. 17065 0/2004:

6. In this writ petition, for the assessment year 1990-91, the Assessing Authority vide order dated June 21, 1993 found the petitioner entitled to refund of Rs. 96,981.96. The refund of the said amount has been made on July 30, 2004. The petitioner has claimed interest on the said amount in terms of Section 12(3) of the Act.

C.W.P. No. 18536 of 2004:

7. The petitioner in this writ petition is running a mill under the name of M/s. Chenab Textile Mills at Kathua and is a registered dealer under the Act. A penalty of Rs. 3,95,000 was imposed upon the petitioner on August 30, 1995 by the Assistant Excise and Taxation Commissioner-cum-Deputy Director (Enforcement) in terms of Section 14-B(7) of the Act. The said amount was realised on October 6, 1995 when the demand draft was issued by the bank after encashment of the bank guarantee in favour of the Deputy Director (Enforcement). The appeal against the said order was dismissed by the Deputy Excise and Taxation Commissioner on September 20, 1999 but the learned Sales Tax Tribunal accepted the appeal on July 21, 2003 holding that the penalty has been wrongly imposed. The said order having attained finality, the petitioner-firm claims that it is entitled to refund after the expiry of permissible period in terms of Section 12(3) of the Act. After prolonged correspondence, the amount of Rs. 3,95,000 has been paid on July 29, 2004. Thus, the petitioner claims interest for the period October 23, 2003 to July 29, 2004.

8. In view of the above facts, learned Counsel for the petitioner has vehemently argued that the petitioner is entitled to interest on the amount of refund in terms of Section 12(3) of the Act as the petitioner became entitled to refund on the basis of the order passed by the appellate authority. In terms of the aforesaid provisions, if the refund is not made within 90 days, the authorities under the Act are statutorily liable to refund the amount with interest. On the other hand, learned State Counsel has vehemently argued that the petitioner has to apply for refund in terms of Section 12(1) of the Act. It is further argued that the petitioner has not sought refund soon after the orders were passed by the appellate authority and also remained inactive for long period to claim refund, therefore, the respondents are not liable to pay interest on the said amount.

9. Section 12 of the Act, interpretation of which is invited, reads as under:

Section 12. Refund.--(1) The Assessing Authority shall in the prescribed manner refund to a registered dealer applying in this behalf any amount of tax, interest or penalty paid by such dealer under this Act--

(a) if the amount of tax, penalty or interest so paid is in excess of the amount due from him under this Act ; or

(b) if the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce ;

(c) either by a refund voucher or, at the option of the dealer, by adjustment of the amount so paid with the amount due from him, in respect of any other period:

Provided that the refund under Clause (b) shall be subject to such conditions, as may be prescribed:

Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of three years from the date on which such claim accrues.

Explanation.--For the purpose of this Sub-section the expression "in the course of inter-State trade or commerce" shall have the meaning assigned to it by Section 3 of the Central Sales Tax Act, 1956.

(2) Notwithstanding anything contained in Sub-section (1), the Assessing Authority shall first adjust the amount to be refunded towards the recovery of any amount due from the dealer on the date of such adjustment, and shall thereafter refund the balance, if any.

(3) Where any amount required to be refunded by the Assessing Authority to any person by virtue of an order issued under this Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one per centum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half per centum per month till the refund is made:

Provided that for the purpose of calculation of the interest, part of a month shall be considered as one month and any amount less than one hundred rupees shall be considered as one hundred rupees.

(4) If the delay in allowing refund within the aforesaid period of ninety days is for reasons beyond the control of the Assessing Authority or attributable to the dealer, whether wholly or in part, the period of such delay shall be excluded from the period for which interest is payable.

(5) If any question arises whether any period is to be excluded for the purposes of calculation of interest under Sub-section (4) the same shall be referred to the

Commissioner or such other officer as the State Government may, by notification, appoint, whose decision shall be final.

(6) Where an order allowing 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 is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

(7) The period during which the refund remains withheld under Sub-section (6) shall be excluded for the purpose of calculation of interest under this section. (Relevant Rules: 48, 49, 49A, 50, 53, 54 and 55).

10. A perusal of the above provision would show that Sub-sections (1) and (3) of Section 12 of the Act operate in different fields. Sub-section (1) is applicable if the amount of tax, penalty or interest is paid in excess of the amount due or the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce. The provision to Sub-section (1) contemplates that the claim for refund is required to be made within a period of three years from the date on which such claim accrues. The said claim is based upon the action of the dealer in deposit of the tax, interest or penalty and consequently there is limitation for claiming refund on the basis of action of the dealer alone. Under Sub-section (3) of Section 12, the Assessing Authority is to give effect to the orders issued under the Act. Thus, if the order of assessment has undergone modification or reversal by the authorities under the Act, the same is to be given effect by the Assessing Authority. The said provision does not contemplate any application of refund on the part of the assessee. The interest for the delay can be denied if such delay is beyond the control of the authority or attributable to the dealer. The mere fact that the dealer was not running around the Assessing Authority to seek refund is not a reason which can be attributed to the dealer for delay in allowing the refund. In fact, the respondents have not given any reason which can be said to be beyond the control of the Assessing Authority for the delay in allowing refund nor any other reason is attributed to the dealer.

11. Thus, we allow the present writ petitions and hold that in terms of Sub-section (3) of Section 12 of the Act, the dealer is entitled to simple interest for the period and at the rate mentioned. The interest so accruing to the petitioner shall be payable within three months from the date certified copy of the order is received by the respondents.