

(2004) 02 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 17772 of 2003

Khem Ram Devi Sahai

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Feb. 3, 2004

Acts Referred:

- Haryana General Sales Tax Rules, 1975 - Rule 35

Citation: (2006) 146 STC 386

Hon'ble Judges: N.K. Sud, J; K.S. Garewal, J

Bench: Division Bench

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

Judgement

N.K. Sud, J.

Petitioner, a registered dealer under the Haryana General Sales Tax Act, 1973 and also under the Central Sales Tax Act, 1956 has filed this petition seeking a direction in the nature of mandamus directing the respondents to issue refund of Rs. 85,175 along with interest.

2. The undisputed facts are that the assessment of the petitioner for the assessment year 2000-2001 was finalised by respondent No. 2 vide assessment order dated March 26, 2003 and the petitioner was found entitled to a refund of Rs. 85,175. The assessment order was served on the petitioner in April, 2003, but no refund voucher was issued. Petitioner filed an application on June 2, 2003 for the issuance of refund due to it. When nothing was heard from the respondents, it sent a reminder on July 17, 2003. Since the reminder also failed to evoke any response from the respondents, it filed the present writ petition.

3. On notice, written statement on behalf of respondent No. 2 has been filed in which it has been pointed out that the Deputy Excise and Taxation Commissioner-cum-Revisonal Authority, Rewari, vide order dated December 19,

2003, has set aside the assessment order dated March 26, 2003 and the Assessing Authority has been directed to make a fresh assessment. It is, thus, claimed that in view of this order, no refund is due to the petitioner and, as such, the applications sent by it claiming refund have become infructuous.

4. In the light of the abovementioned factual position, Mr. Avneesh Jhingan, learned Counsel for the petitioner, has restricted the petitioner's claim in the writ petition to grant of interest on account of non-issuance of refund from March 26, 2003 to December 19, 2003. He pointed out that in terms of Rule 35 of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules"), the Assessing Authority was required to send the refund voucher along with the assessment order. He, therefore, contended that since in the present case, the refund voucher was not issued along with the assessment order dated March 26, 2003, the petitioner was entitled to interest from that date. For this purpose, he placed reliance on the judgment of this Court in *Sneh Builders (P.) Ltd. v. State of Haryana* [2002] 125 STC 32 : (2001) 18 MPHT 316. He also pointed out that the claim of interest could not be denied on the ground that vide order dated December 19, 2003 the revisional authority had set aside the assessment and ordered a fresh assessment. He pointed out that there is no provision in the statute authorising the authority to impose a tax from a retrospective date. He, therefore, claimed that the petitioner was entitled to interest from March 26, 2003 to December 19, 2003 on the amount of Rs. 85,175 during which period the respondents had withheld the amount which was payable to it on March 26, 2003. In support of this claim, he placed reliance on the judgment of this Court in [Saurabh Kumar and Bros. Vs. State of Punjab and Others](#), .

5. Ms. Ritu Bahri, learned Deputy Advocate-General, Haryana, reiterated the stand taken in the written statement and contended that since the assessment order under which refund had become payable to the petitioner had been set aside by the revisional authority on December 19, 2003 the petitioner was not entitled to any refund. She further contended that in the absence of any refund of principal amount due to the petitioner, there was no question of payment of any interest.

6. Having heard the counsel for the parties, we are satisfied that the petitioner deserves to succeed in its claim for interest. In the case of *Saurabh Kumar & Bros.* [2002] 127 STC 556 SC : (2001) 18 PHT 336, this Court had noticed Rule 35 of the Rules (sic) and held that if the refund is not issued with the assessment order, the department is liable to pay interest. Thus, it has been correctly claimed that the department was liable to issue refund on March 26, 2003. It has also been correctly pointed out that the subsequent order dated December 19, 2003 did not absolve the department of its liability to issue refund as no demand can be created from a retrospective date. This issue stands settled in the case of [Saurabh Kumar and Bros. Vs. State of Punjab and Others](#), , where under identical circumstances the dealer was held to be entitled to interest. In that case, a penalty of Rs. 50,000 had been imposed by the Assessing Authority on May 3, 1994. This order was challenged in

appeal which was allowed on November 26, 1997. However, on acceptance of appeal, the amount deposited was not refunded. Since the representations of the petitioner yielded no result, the petitioner approached the High Court. The department had taken the stand that the appellate authority while cancelling the penalty on November 26, 1997 had remanded the matter to the Assessing Officer for fresh consideration. The Assessing Officer vide his order dated June 25, 2001, had again imposed the penalty of Rs. 50,000 and, thus, it was contended that no refund of interest was due to the petitioner in that writ petition. This contention was negated by this Court on the ground that the dealer had become entitled to refund on November 26, 1997 when the penalty had been cancelled and matter remanded. It was further held that the subsequent order dated June 25, 2001 could not impose penalty from a retrospective date.

7. Respectfully following the decision in the case *Saurabh Kumar & Bros* [2001] 127 STC 556 (P&H) : (2001) 18 PHT 336 (P&H), we hold that the petitioner is entitled to interest on refund on the amount of Rs. 85,175 from March 26, 2003 to December 18, 2003. The respondents are directed to calculate the same and issue the refund voucher within one month from the date of receipt of a certified copy of this order.

8. The writ petition stands disposed of in the above terms with no order as to costs.