

(2004) 07 P&H CK 0030

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8170 of 2004

New India Assurance
Company Ltd.

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: July 6, 2004

Acts Referred:

- Haryana General Sales Tax Act, 1973 - Section 43, 44
- Income Tax Act, 1961 - Section 241

Citation: (2006) 146 STC 223

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

Bench: Division Bench

Advocate: Suman Jain, for the Appellant; Ritu Bahri, Deputy Advocate-General, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sud, J.

This writ petition has been filed praying for issuance of writ in the nature of certiorari for quashing order dated March 18, 2003 (annexure P/5) whereby the refund due to the petitioner under the Haryana General Sales Tax Act, 1973 (for short, "the Act") has been ordered to be withheld by the Excise and Taxation Commissioner, Haryana, exercising powers u/s 44 of the Act. It has been further prayed that the respondents be directed to issue the refund due to the petitioner.

2. The petitioner--New India Assurance Company is a nationalised company incorporated under the Companies Act having its offices all over India. For the assessment years 1994-95 to 1996-97, the Assessing Authority held that the petitioner having sold the serviceable/damaged goods, is a dealer and hence liable to pay tax on such sales. Accordingly he levied not only tax but also imposed penalty

thereon. Not satisfied with the orders passed by the Assessing Authority, petitioner filed appeals before the Joint Excise and Taxation Commissioner (Appeals), Faridabad which were dismissed. Petitioner preferred further appeals before the Sales Tax Tribunal, Haryana, which were partially allowed. It was held that the petitioner was not a dealer under the Central Sales Tax Act, 1956 or Haryana General Sales Tax Act, 1973 as the case may be, so far as its activities of selling is concerned.

3. As a result of the order of the Tribunal, petitioner became entitled to refund of amount of Rs. 1,16,82,073 which amount had been paid by it on March 26, 1999. Accordingly, the petitioner approached the respondents for refund of the aforesaid amount. The Assessing Authority however, issued a refund of Rs. 14,22,342 on April 4, 2003 and withheld the balance amount of Rs. 1,02,59,731 for which the permission was granted by the Excise and Taxation Commissioner, Haryana, vide the impugned order dated March 18, 2003 (annexure P/5) passed u/s 44 of the Act.

4. The petitioner thereafter filed another application dated April 21, 2003 seeking refund of the amount of Rs. 1,02,59,731 which, according to it, had been wrongly withheld by the respondents. It was pointed out therein that as per the information of the petitioner, no further proceedings were pending before the Tribunal and even if some proceedings were pending, the refund could not be withheld because the petitioner is a nationalised insurance company under the General Insurance Business (Nationalisation) Act, 1972 and being a Government company, there could not be any difficulty in recovering the demand which may be created at any subsequent stage. Since no refund was issued, a letter was addressed to the Excise and Taxation Commissioner, Haryana, Chandigarh, dated September 22, 2003 who also failed to redress the grievance of the petitioner. Hence this petition.

5. Mr. Suman Jain, learned Counsel for the petitioner, stated that the impugned order, annexure P/5, has been passed without application of mind. Referring to the provisions of Section 44 of the Act, he submitted that the Assessing Authority has been granted the power to withhold the refund with the prior approval of the Commissioner, if he is of the opinion that the grant of the refund is likely to adversely affect the recovery subsequently. According to him, in the impugned order, although an observation had been made that the recovery of the amount refunded shall be adversely affected later on, but no reason whatsoever has been given for forming this opinion. He further submitted that mere pendency of a review application filed by the Revenue, cannot, by itself, be a ground to withhold the refund. Mr. Jain contended that the impugned order was patently vitiated and deserves to be quashed. He also prayed that the respondents be directed to issue the amount of Rs. 1,02,59,731 wrongly withheld by them, along with the statutory interest thereon.

6. Mr. Ritu Bahri, learned Deputy Advocate-General, Haryana, on the other hand supported the impugned order of the Excise and Taxation Commissioner, Haryana,

and stated that the review applications filed by the respondents are pending and as soon as the same are disposed of by the Tribunal, the consequent refund, if any, shall be released immediately.

7. We have heard counsel for the parties and perused the relevant record.

8. Section 44 of the Act, under which powers have been exercised by the respondents, reads as under:

44. Power to withhold refund.--(1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and Assessing Authority or a person appointed to assist the Commissioner Under Sub-section (1) of Section 3, as the case may be, is of the opinion that the grant of the refund is likely to adversely affect the recovery, he may withhold the refund and refer the case to the Commissioner for order. The orders passed by the Commissioner shall be final.

(2) The period during which the refund remains so withheld shall be excluded for the purpose of calculation of interest u/s 43.

9. A perusal of the above shows that mere pendency of an appeal or further proceedings against an order is by itself no ground to withhold refund. It is further to be established that the grant of refund is likely to adversely affect the recovery subsequently. This aspect is totally lacking in the present case. The petitioner is a Government company and it is not understood as to how the assessing officer could form an opinion that in case after the disposal of the A review applications by the Tribunal, some demand were to be created, the recovery of the same would be adversely affected.

10. While dealing with orders passed under identical provisions of Section 241 of the Income Tax Act, 1961, this Court in [LEADER VALVES PVT. LTD. Vs. COMMISSIONER OF Income Tax AND ANOTHER.](#), [Hansa Agencies Private Ltd. Vs. Commissioner of Income Tax and Another](#), and [Suri Sons Vs. Commissioner of Income Tax and Another](#), has held that where refund had become due to the assessee on annulment of its assessment order, it was not right on the part of the Income Tax Officer to withhold the same u/s 241 on the ground that further proceeding challenging such annulment was pending before the higher forum.

We are, therefore, satisfied that no ground has been shown to us warranting satisfaction on the part of the respondents that issue of refund shall adversely affect the recovery at a subsequent stage. Accordingly, we are of the view that the impugned order, annexure P/5, cannot be sustained. The same is hereby quashed. The respondents are directed to issue the refund due to the petitioner along with statutory interest, if any, forthwith.

The writ petition is accordingly allowed. No costs.