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**(2001) 08 P&H CK 0211**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 704 of 2001

Malli Mal Sant Lal and Co.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Aug. 9, 2001

**Acts Referred:**

- Punjab General Sales Tax Act, 1948 - Section 12(3), 14B

**Citation:** (2002) 126 STC 331

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

**Bench:** Division Bench

**Advocate:** Avneesh Jhingan, for the Appellant; Kartar Singh, Excise and Taxation Officer, Sangrur in person Avneesh Jhingan, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Jawahar Lal Gupta, J.

The petitioner prays that a writ in the nature of mandamus be issued directing the respondent/authorities to refund the amount of Rs. 94,594/- alongwith interest. A few facts need to be noticed.

2. On June 24, 1988, the Assistant Excise and Taxation Commissioner passed an order u/s 14-B of the Punjab General Sales Tax Act, 1948 (in short to be called the "Act"). By this order, a penalty of Rs. 94,594/- was imposed on the petitioner. Aggrieved by the order, the petitioner filed an appeal, the Deputy Excise and Taxation Commissioner (Appeals), Patiala accepted the appeal vide his order dated May 14, 1990. After the order had been passed by the Appellate Authority, the petitioner requested the respondents for refund of the amount of Rs. 94,594/-, which had been deposited by it in pursuance to the order of the Assessing Authority. Despite various representations, the respondents did not respond. As a last resort, the petitioner was constrained to approach this Court through the present writ petition.

3. In pursuance to the notice of motion, the respondents have filed a written statement. It has been inter alia averred that the petition is belated. Thus, the relief for refund of the amount be declined. It has been further averred that there were floods in district Sangrur. The records were destroyed. As a result, "it is not safe to give the refund to the petitioner at this belated stage". However, the factual position that the Appellate Authority had accepted the petitioner's appeal and set-aside the order of penalty has not been disputed.

4. Mr Jhingan, learned counsel for the petitioner submits that the Appellate Authority having set-aside the order of penalty in May 1990, the respondents should have refunded the amount within a reasonable time. They having failed to perform their duty, the petitioner had represented. Despite that, the refund was not given.

5. Counsel for the respondents is not present. However, Mr Kartar Singh, Excise and Taxation Officer, Sangrur is present. He states that he has got a Refund Payment Order for an amount of Rs. 94,594/-. He has handed it over to the counsel for the petitioner.

6. Admittedly, the department had not challenged the order passed by the Appellate Authority on May 14, 1990. The refund should have been released soon after passing of this order. The payment has been actually made after a lapse of more than 11 years. The action of the Department in not refunding the amount was totally arbitrary and unjustified. The amount of Rs. 94,594/- has been paid to the petitioner today. However, in view of the provisions of Section 12(3) of the Act, the respondents are also liable to pay interest. The amount shall be calculated and paid to the petitioner within one month from the date of receipt of a certified copy of this order.

7. The conduct of the respondents leaves a lot to desire. Firstly, the petitioner was wrongly burdened with an order of penalty. It had to make the deposit. When the appeal was accepted, the respondents failed to perform their duty and refund the amount. Despite representations, which had admittedly been received by the respondents, the needful was not done. It is a fit case for the award of penal costs. However, we award token costs of Rs. 5000/- to the petitioner. This shall also be paid alongwith the amount due on account of interest. The Government may consider the desirability of recovering the costs personally from the officers, who may be found responsible for the failure to make the refund.

8. The writ petition is accordingly disposed of.

Sd/- Ashutosh Mohunta, J.