Before S.J. Vazifdar, CJ & Anupinder Singh Grewal, J.

M/S ABHITEX INTERNATIONAL—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 22428 of 2016

January 23, 2017

Constitution of India, 1950—Arts. 226 and 227—Haryana Value Added Tax, 2003—S.20—Provisional Refund—Revised Return—Calculation error in claiming refund in initial return, error in revised return—Application seeking correction filed—Provisional refund limited to claim made in VAT-A4—Authority directed to assess prima-facie correctness of return and its modification in deciding application for provisional refund.

Held, even assuming the grant of provisional refund is not mandatory, an assessee is entitled to have his application for provisional refund under section 20(3) of the Haryana Value Added Tax Act, 2003 decided on a consideration of relevant facts and on a reasonable and fair basis. Section 20 (2) does not preclude an assessee's application being considered after the return is corrected, modified or amended. It does not require the authorities to consider the application under section 20(2) only on the basis of the original return even though it is found to be incorrect and the authority comes to the conclusion that the assessee has rightly corrected it. It is for the authority to assess prima-facie the correctness of a return and any modification thereof even for the purpose of deciding an application for provisional refund.

(Para 7)

Avneesh Jhingan, Advocate,
for the petitioner

Mamta Singla Talwar, D.A.G., Haryana
for the respondents.

S.J.VAZIFDAR, C.J. oral

(1) The petitioner has challenged the order of the Excise &Taxation Officer-cum-Assessing Authority, Panipat dated 16.08.2016 allowing the provisional refund of only Rs.39 lacs against the claim of about Rs. 83 lacs.

(2) The matter pertains to the period 01.04.2015 to 30.06.2015. The petitioner had filed a return initially claiming a refund of only Rs.4 lacs. Claiming that this was due to calculation errors on its part, the petitioner on 03.11.2015 filed a revised return. The petitioner contends that it committed an error even in the revised return by considering the output liability to be taxable at 12.5% instead of at 4%. The petitioner, therefore, on 06.11.2015 filed an application pointing out this mistake and seeking a correction in respect thereof.

(3) The application was initially forwarded to the Excise and Taxation Officer-cum-Assessing Authority-respondent No.2, who in turn forwarded it to the Deputy Excise & Taxation Commissioner, Panipat. It was further forwarded to the Excise & Taxation Commissioner-respondent No.3. The Deputy Excise & Taxation Commissioner, Panipat by a communication dated 20.11.2015 addressed to the Excise & Taxation Commissioner stated that it was not possible to resolve the issue by him and therefore, requested the Excise & Taxation Commissioner to take necessary action at his own level.

(4) The regular assessment orders have not been passed. On 04.04.2016 the petitioner made an application for provisional refund under section 20(3) of the Haryana Value Added Tax Act, 2003 which reads as under:-

> "**Section 20-Refund**
>
> ……**(3)** A VAT dealer may seek refund by making an application containing the prescribed particulars accompanied with the prescribed documents in the prescribed manner to the assessing authority who shall, after examination of the application, allow provisionally refund to the dealer."

(5) This application was disposed of by the impugned order dated 16.08.2016 passed by the Excise & Taxation Officer-respondent No.2. The order accepts the petitioner's output liability to be Rs.18,37,270/- under the Haryana Value Added Tax Act and Rs.5,02,193/- under the Central Sales Tax Act, 1956 aggregating to Rs.23,39,463/-. The order also finds the output tax available to the petitioner to be Rs.1,08,96,010/-. The refund due to the petitioner is provisionally assessed in the impugned order itself at Rs. 85,56,547/-.

(6) Absent any other circumstances including the adjustments contemplated under section 20 itself, respondent No.2 would have been entitled to be considered for a provisional refund of Rs. 85,56,547/-.

However, the amount of provisional refund was limited to the basis of the claim allegedly order states:-

> "(-) Rolled over in the interest of revenue & not to exceed claim made in VAT A-4 & Returns 4656547-00 Excess 3900000-00Rs. 39,000,00 to be refunded provisionally."

(7) Even assuming the grant of provisional refund is not mandatory, an assessee is entitled to have his application for provisional refund under section 20(3) of the Haryana Value Added Tax Act, 2003 decided on a consideration of relevant facts and on a reasonable and fair basis. Section 20(2) does not preclude an assessee's application being considered after the return is corrected, modified or amended. It does not require the authorities to consider the application under section 20(2) only on the basis of the original return even though it is found to be incorrect and the authority comes to the conclusion that the assessee has rightly corrected it. It is for the authority to assess prima-facie the correctness of a return and any modification thereof even for the purpose of deciding an application for provisional refund.

(8) Respondent No.2 does not state that the application for provisional refund cannot be decided on the basis of the actual refund due and that it must necessarily be assessed only on the basis of the refund originally filed or even rectified once, although that may be found to be incorrect. The impugned order does not state that the rectification sought is not sustainable either on facts or due to any legal impediment. The computation of the refund as sought to be corrected is, although provisional, not only accepted by respondent No.2 but infact accepted in excess what was claimed by the petitioner.

(9) In these circumstances, limiting the amount of refund under sub section (3) of Section 20 of the Haryana Value Added Tax Act, 2003, allegedly "in interest of revenue" would be arbitrary and not reasonable. There are no reasons for this ground "in interest of revenue".

(10) In these circumstances, the petition is disposed of by the following order:-

> Respondent No.2 shall pass a fresh order pursuant to the petitioner's application dated 04.04.2016 for a provisional refund after taking into consideration the application for refund dated 06.11.2015 which is in the sum of Rs.83,04,021/-.

Although the impugned order computes the refund at Rs.85,56,547/-, we have refrained from passing a mandatory order directing the respondents to refund the balance amount also at the provisional stage in the event of there being any other circumstances which prevents the petitioner from being paid the entire amount towards provisional refund. It is clarified that the mere fact that the return and the revised return contain the alleged error would not be a ground for rejecting the same.

(ii) The second respondent is requested to pass a fresh order by 28.02.2017.

Shubreet Kaur