

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

th

ON THE 6 OF JULY, 2023

WRIT PETITION No. 13970 of 2017

BETWEEN:-

**M/S GLORY CREATIONS, HARIOM MARKET,
NEAR NAGAR PALIK NIGAM, JABALPUR (M.P.)
THROUGH ITS PROPRIETOR SHRI
KANHIYALAL ADNANI S/O LATE SHRI
HASANAND ADNANI, AGED ABOUT 67 YEARS,
RESIDENT OF HOUSE NO. 1185, SUDHA VIHAR,
RAMPUR, JABALPUR (M.P.) HARIOM MARKET,
NEAR NAGAR PALIK NIGAM JABALPUR (M.P.)**

.....PETITIONER

***(BY SHRI K.K. DUBEY - ADVOCATE WITH SHRI ABHIJEET
SHRIVASTAVA - ADVOCATE)***

AND

- 1. COMMERCIAL TAX OFFICER, CIRCLE NO. 3,
VANIJYIK KAR BHAWAN, COLLECTORATE
ROAD, JABALPUR (M.P.)**
- 2. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, COMMERCIAL TAX
DEPARTMENT, MANTRALAYA, VALLABH
BHAWAN, BHOPAL (M.P.)**

.....RESPONDENTS

(RESPONDENTS BY SHRI A.D. BAJPAI – GOVERNMENT ADVOCATE)

*This petition coming on for admission this day, **JUSTICE SHEEL NAGU** passed the following:*

ORDER

The short prayer made in this petition preferred by an assessee is that despite passing of an order of refund on 30.11.2015 (Annexure P/1), the amount of refund was credited in the account of petitioner as late as on 30/08/2017.

2. Pertinently, this is second round of litigation after exhausting the first one in shape of W.P. No.7366/2017 which was disposed of vide order dated 17.05.2017 (Annexure P/3) extending liberty to the petitioner to make a representation before the Revenue with corresponding direction to the Revenue to decide the same in accordance with law. Thereafter, petitioner made representations on 04.07.2017, 04.08.2017 and 17.08.2017 vide Annexure P/5.

2.1 Eventually, the Commercial Tax Officer, Jabalpur Circle-3, issued Form-39 on 30.08.2017 (Annexure P/6) directing the Treasury Officer to release an amount of Rs.4,99,130/- (amount of refund) in favour of petitioner.

3. In the aforesaid given facts and circumstances, the petitioner claims interest for delayed payment of refund in terms of sub-section (5) of Section 37, which for ready reference and convenience is reproduced below :

“Sec.37 : Refund

- | | | | |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx |
| (4) | xxx | xxx | xxx |

- (5) Where a refund of any amount under sub-section (1) or sub-section (3) is not made or is not applied for the purposes mentioned in sub-section (4) within sixty days from the date of passing of the order for refund, the dealer shall be entitled and be paid interest at the rate of one percent per month on the amount of refund for the period commencing from the date of expiry of the said period of sixty days and ending with the day on which the refund is made to him under sub-section (1) or sub-section (3) or is applied for the purposes mentioned in sub-section (4), as the case may be.”

Explanation -

- (i) Under this sub-section where the period for which interest is payable covers a period less than a month, the interest payable in respect of such period shall be computed proportionately.
- (ii) For the purpose of this sub-section “month” shall mean thirty days.”

4. The contention of learned counsel for State is that the period of 60 days mentioned in Section 37(5) starts to run from the date of issuance of the order of refund in Form-39 which was issued to petitioner on 30.08.2017, and, therefore, there was no delay and thus the question of interest accruing to petitioner does not arise.

5. A bare perusal of Section 37(5) reveals that when a refund entitled to an assessee under sub-section (1)/(3) of the said Section is not made within sixty days from the date of passing of the order for refund, the dealer shall be entitled to interest at the rate of one percent per month on the amount of

refund for the period commencing from the date of expiry of prescribed 60 days and ending when the refund is actually made.

5.1 The contention of learned counsel for Revenue is that the expression “passing of the order for refund” is in fact issuance of Form-39 vide Annexure P/6 and not the order of Assessment Officer made on 30/11/2015 (Annexure P/1). State counsel has urged for a conjunctive reading of Section 37(5) and Rule 48(1)(a) of the M.P. VAT Rules, 2006.

5.2 For ready reference and convenience, the entire Section 37 as well as Rule 48 is reproduced below :

“37 : Refund

(1) If the Commissioner is satisfied that the tax or penalty or both or interest paid by or on behalf of a dealer for any year exceeds the amount of the tax to which he has been assessed or the penalty imposed or the interest payable under this Act for that year or that a registered dealer [or person other than a registered dealer] is entitled to the refund of rebate under of Section 14, he shall, in the prescribed manner, refund any amount found to have been paid in excess in cash or by adjustment of such excess towards the amount of tax due in respect of any other year from him.

(1A) Notwithstanding anything contained in sub-section (1), if the refund is due to input tax rebate pertaining to sales of canteen stores, the refund shall be adjusted towards any other tax liability of the Canteen Stores Department and on an application by the Canteen Stores Department, the balance of refund may be adjusted towards the tax liability of any other registered dealer.

(2) If the Commissioner is satisfied that due to an error committed by the [dealer or person] while crediting any amount payable under this Act or the Act repealed by this Act or the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (No.52 of 1976) or the Central Sales Tax Act, 1956 (No.74 of 1956), into Government treasury the

amount so paid cannot be accounted for the purpose for which it is credited, he shall subject to the provisions of sub-section (4) refund that amount in the manner prescribed either in cash or by adjustment towards the amount of tax due in respect of any other year from him.

(3) If the appellate authority or the Commissioner is satisfied to the like effect it shall cause refund to be made of any amount found to have been wrongly paid or paid in excess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3) the authority empowered to grant refund shall apply the refundable amount in respect of any year towards the recovery of any tax, penalty, interest or part thereof due under this Act or under the Act repealed by this Act or under the Central Sales Tax Act, 1956 (No.74 of 50 1956) or under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No.52 of 1976) and shall then refund the balance remaining, if any.

(5) Where a refund of any amount under sub-section (1) or sub-section (3) is not made or is not applied for the purposes mentioned in sub-section (4) within sixty days from the date of passing of the order for refund, the dealer shall be entitled and be paid interest at the rate of one per cent per month on the amount of refund for the period commencing from the date of expiry of the said period of sixty days and ending with the day on which the refund is made to him under sub-section (1) or sub-section (3) or is applied for the purposes mentioned in sub-section (4), as the case may be.

Explanation -

- (i) Under this sub-section where the period for which interest is payable covers a period less than a month, the interest payable in respect of such period shall be computed proportionately.*
- (ii) For the purpose of this sub-section “month” shall mean thirty days.”*

“Rule 48: Refund payment order

- (1)(a)** *When an order directing the refund of any amount has been made by an Assistant Commercial Tax Officer or a Commercial Tax Officer, the Commercial Tax Officer and when such order is made by an Assistant Commissioner, the Assistant Commissioner shall, if the dealer desires payment in cash, issue to him a refund payment order in Form 39 for such amount as may remain after deducting any amount in respect of which a notice under sub-section (5) of Section 24 has been issued or which has to be adjusted under Rule 49.*
- (b)** *where the amount for which the refund payment order is issued exceeds rupees five thousand, such refund payment order shall be crossed and made “Account Payee”.*
- (2)** *The refund payment order shall be delivered to the dealer and a copy thereof shall be forwarded to the Treasury Officer concerned.”*

(emphasis supplied)

6. A bare reading of Section 37(5) reveals that if the amount of refund of tax is not made to the assessee within a period of sixty days from the date of passing of the order of refund, then Revenue is obliged to pay interest for the delay that takes place after expiry of sixty days till the date of payment at the rate of one per cent per month on the amount of refund.

6.1 Thus, it is obvious that after the order of refund was passed on 30.11.2015 (Annexure P/1), it was obligatory on the Revenue to have paid the amount of refund within sixty days without the assessee asking for the same.

6.2 In the instant case, it is not disputed that the refund of payment was actually made as late as on 30.08.2017 and, therefore, the delay that has taken place from 30.01.2016 (30.11.2015 + 60 days) till 30.08.2017 (date of payment), the Revenue is duty bound under the statute to pay interest at the aforesaid rate which it has failed to do thereby compelling the petitioner-assessee to approach this court.

6.3 The argument of learned counsel for the Revenue that the interest has to be calculated after the issuance of Form-39 (Annexure P/6) is untenable since Form-39 finds mention in Rule 48(1)(a) which is subservient to the statutory provision of the Act. When, Section 37 in mandatory terms obliges Revenue to pay interest on any delay beyond the period of sixty days, then the procedural provision of Rule 48 or any form for that matter cannot jeopardize the right of interest flowing from Section 37(5).

7. From the aforesaid, it is evident that despite clear mandatory provision of payment of interest on tax refund if paid after expiry of sixty days, the Revenue has delayed the payment from 30.01.2016 to 30.08.2017 thereby entitling the assessee to interest at the prescribed rate.

7.1 It is also surprising to note that the Revenue has even opposed this genuine cause of the assessee which should have been redressed without compelling the assessee to come to this Court and wait for more than 5-6 years for relief.

8. In view of above, the Revenue has acted *dehors* the litigation policy of the State, which in clear terms discourages frivolous litigation.

9. Consequently, present petition stands **allowed** with the following directions:

- (i) The Revenue, by way of writ of mandamus is directed to pay interest to the petitioner-assessee from 30.01.2016 till 30.08.2017 on the delayed payment of refund of tax as mentioned in Annexure P/6 at the rate prescribed in Section 37(5).
- (ii) Since the Revenue has compelled the petitioner-assessee to file this avoidable piece of litigation, which has consumed enough precious time of this Court which could have been utilized in deciding more pressing matters, the Revenue is obliged to pay cost of this litigation to petitioner-assessee as well as to pay exemplary cost. Accordingly, the Revenue is directed to pay cost of **Rs.10,000/- (Rupees Ten Thousand only)** which shall be credited to the bank account of petitioner through digital transfer and the Revenue is further directed to pay an amount of **Rs.10,000/- (Rupees Ten Thousand only)** in favour of Secretary, M.P. State Legal Services Authority, Jabalpur for wasting precious time of this Court in adjudicating this avoidable piece of litigation. The MPSTLSA shall donate this amount to the Permanent Artificial Organ Transplantation Centre, Netaji Subhash Chandra Bose Medical College, Jabalpur.
- (iii) The aforesaid directions be complied with within a period of sixty days and compliance report be filed latest

by 18.09.2023, failing which the Registry is directed to list this matter as PUD for compliance.

(SHEEL NAGU)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

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