

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 9777 of 2014.

Reserved on: 29.10.2024

Date of decision: 4.11.2024.

General Manager, Punjab Roadways Pathankot

.....Petitioner.

Versus

**Excise & Taxation Commissioner-cum-Revisional Authority and
ors.**

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Acting Chief Justice

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr. Vinod Chauhan, Advocate.

**For the Respondents : Mr. Anup Rattan, Advocate
General with Mr. Sushant Kaprete,
Addl.A.G., for the respondents-
State.**

Tarlok Singh Chauhan, Acting Chief Justice

The instant petition has been filed for grant of the
following substantive reliefs:-

- “i) That a writ of certiorari may very kindly be issued
thereby quashing and setting aside order dated
15.9.2014.

(i)a. That a writ of certiorari may kindly be issued thereby quashing and setting aside order dated 19.10.2014

(i)b. That a writ of certiorari may kindly be issued thereby quashing and setting aside the penalty part of order dated 22.3.2000.”

2. At the outset, it needs to be pointed out that prayer (i)(b) (supra) has been wrongly typed out, as there is no order passed by any authority on 22.3.2000 and moreover, the said order could not have been challenged in anticipation given the fact that the Writ Petition was filed on 23.12.2014.

3. The facts are not in dispute. The Assessing Authority, Damtal had assessed the petitioner for the years 1991-92 to 1999-2000 and created total additional demand of Rs.1,01,76,828/-. An amount of Rs.83,25,082/- due on account of passenger tax and surcharge was deposited by the petitioner whereas, an appeal was filed before the Appellate Authority (North Zone, Palampur) by the petitioner against the imposition of interest and penalty amounting to Rs.18,51,746/-. The Appellate Authority waived off an amount of Rs.20,300/- towards penalty and as regards the interest levied vide assessment order, the same was upheld by the Appellate Authority vide order dated 19.10.2012 (Annexure P-2).

4. Aggrieved by the order passed by the Appellate Authority, the petitioner preferred Revision Petition before the Excise & Taxation Commissioner-cum-Revisonal Authority, Himachal

Pradesh, who vide order dated 15.9.2014 (Annexure P-3) dismissed the Revision Petition.

5. It is vehemently contended by Shri Vinod Chauhan, learned counsel for the petitioner that the orders passed by the authorities below are perverse in as much as the Assessing Authority had never imposed or demanded any tax from the petitioner, which pertains to Pathankot, rather the same has been imposed vide order dated 22.3.2000 against the petitioner for the year 1991-92 to 31.12.1999 alongwith interest and penalty. He has further argued that it is only due to sheer inadvertence and under bonafide mistake that the tax was filed before ETO, Gurdaspur under the Passenger and Goods Tax Act, 1955 and, therefore, the petitioner was not liable to pay any interest.

6. On the other hand, it is argued by Mr. Sushant Kaprete, learned Additional Advocate General that no doubt the petitioner had deposited the tax with the Excise & Taxation Officer, Gurdaspur in the State of Punjab, but nonetheless, the petitioner has plied the bus within the territory of Himachal Pradesh and thus, the petitioner is liable to pay the tax as also interest in accordance with the provisions contained in Himachal Pradesh Passenger and Goods Taxation Act, 1955 (hereinafter referred to as the 'PGT Act'), It is further contended that the petitioner cannot claim any exemption from payment of interest towards its own negligence and as per the

provisions of Section 12-A of the PGT Act, it is mandatorily required to pay amount towards interest.

7. We have heard learned counsel for the parties and have gone the material placed on record.

8. It is not in dispute that the petitioner did not deposit any tax with the authorities of Himachal Pradesh despite the fact that it had been running its buses within its territory and thus, in this manner, it deprived the State of Himachal Pradesh of its legitimate amount of tax. Once that be so, obviously, it would be liable to pay interest, for it is more than settled that a person or authority deprived of use of money to which one is legitimately entitled to has a right to be compensated for the deprivation, which may be called interest, compensation or damages. Reference in this regard can conveniently be made to the Constitution Bench judgment of the Hon'ble Supreme Court in ***Secretary, Irrigation Department, Government of Orissa and others Vs G.C.Roy 1992 (1) SCC 508***.

9. In addition to the above, the petitioner would be liable to the payment of interest under Section 12-A of the PGT Act, which reads as under:-

“[12-A. Payment of interest.-

(1) If any owner fails to pay the amount of tax or surcharge due from him under this Act, except to the extent mentioned in sub-section (2), he shall, in addition to the amount of tax or surcharge, be liable to pay simple interest on the amount of tax or surcharge due immediately following the last date on which

the owner should have either filed the return or paid the tax or surcharge under this Act, for a period of one month and thereafter at the rate of one and a half percent per month till the default continues.

(2) If the amount of tax or surcharge or penalty due from an owner is not paid by him within the period specified in the notice of demand or, if no period is specified within thirty days from the service of such notice, the owner shall, in addition to the amount of tax or surcharge or penalty, be liable to pay simple interest on such amount at the rate of one percent per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a period of one month and thereafter at the rate of one and a half percent per month till the default continues,

(2) Provided that where the recovery of any tax or surcharge or penalty is stayed by an order of any court, the amount of tax or surcharge or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date of tax or surcharge or penalty first became due.

(3) The amount of interest payable under this section shall-

(i) be calculated by considering if part of a month is more than fifteen days as one month and any amount if more than fifty rupees but less than one hundred rupees as one hundred rupees;

(ii) for the purposes of collection, and recovery, be deemed to be tax under this Act;

(iii) be in addition to the penalty, if any, imposed under this Act.”

10. The petitioner instead of assailing the orders passed by the authorities below, which are in consonance with the law, should have in fact moved the tax authorities in Punjab for the refund of the tax or a part thereof, that according to it had been paid by inadvertence or if the tax was wrongly paid, recovered or retained, it was there that the petitioner could have concomitantly invoked the doctrine/principles of unjust enrichment, equity, justice and good conscious. However, as regards the imposition of tax which is not disputed and the interest thereupon, the petitioner can have no grouse qua the same, as it has been recovered in consonance with the provisions of the Act. Having legally ordered to be recovered, that too, strictly in consonance with the provisions of the PGT Act, any other interpretation would lead to an incongruous conclusion, as the State cannot be deprived of its due share of tax and interest on the belated payment.

11. In view of the above, we find no merit in the petition and the same is accordingly dismissed. 50% of the amount deposited in the Registry of this Court is directed to be refunded to the State on furnishing its account number and the petitioner is directed to deposit the remaining 50% of the interest liability alongwith interest as payable under Section 12-A of the PGT Act if not already

deposited in the Registry of this Court within a period of one month from today.

12. Accordingly the instant petition is disposed of, so also the pending application(s), if any.

(Tarlok Singh Chauhan)
Acting Chief Justice

(Satyen Vaidya)
Judge

4th November, 2024 (mamta)