(2010) 05 P&H CK 0290

In the Punjab And Haryana At Chandigarh

Case No : V.A.T.A.P. No''s. 26 and 27 of 2008

Avneet Distillers (P) Ltd. APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 25(5)
Punjab General Sales Tax Act, 1948 — Section 10(6), 11D, 11D(1), 4B

Citation : (2011) 42 VST 386

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—This order shall dispose of the aforementioned two appeals as the common question of law and facts arise for determination by this court. However, we have taken the facts from V.A.T.A.P. No. 26 of 2008.

2. The following substantial question of law arises for consideration by this court :

Whether, in the fact and circumstances of the case, the assessee is liable for payment of interest for the period prior to the date of assessment ?

3. The appellant-assessee was a dealer registered under the provisions of the Punjab General Sales Tax Act, 1948 (for short, "the Act") during the impugned assessment year 2001-02. It filed its returns of sales showing a turnover of Rs. 2,10,92,418 claiming it to be branch transfers. However, no tax was payable on the basis of those returns filed by the assessee.

4. The Assessing Authority framed assessment for the said period on June 28, 2003 vide annexure A1 accepting the returns and allowing the deduction on account of branch transfers. However, while framing the assessment, the Assessing Authority levied the purchase tax u/s 4B of the Act. A penalty of Rs. 40,000 u/s 10(6) and interest u/s 11D(1) of the Act was also imposed. In appeal, the Tribunal has held that as the tax in the case had been paid according to the returns filed by the assessee, hence, no penalty was leviable u/s 10(6) of the

Act. However, payment of interest was upheld.

5. The learned counsel for the assessee has submitted that the present case is squarely covered by the judgment rendered in G.S.T.R. Nos. 29 to 39 of 1997, decided on March 5, 2010 titled as Lakhi Ram Diwan Singh Vs. State of Haryana, ".

6. The learned counsel for the assessee submits that while deciding Lakhi Ram Diwan Singh''s case [2010] 30 VST 419, this court placed reliance on J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and Frick India Limited v. State of Haryana reported as [1994] 95 STC 188 (SC).

7. The learned counsel for the assessee has further submitted that the provisions of section 11D of the Act are in pari materia with section 25(5) of the Haryana General Sales Tax Act, 1973, which was the subject-matter of consideration in Lakhi Ram Diwan Singh Vs. State of Haryana,

8. The learned State counsel, however, submits that as the tax had not been paid by the assessee, therefore, it is liable to pay the interest u/s 11D of the Act.

9. After hearing the learned counsel for the parties, we are of the considered opinion that the present case is squarely covered by Lakhi Ram Diwan Singh Vs. State of Haryana, , wherein it was held that the assessee is liable to pay interest u/s 25(5) of the Haryana General Sales Tax Act, 1973 from the date of assessment and not prior thereto.

10. In view of the above, the question posed in these appeals is answered in favour of the assessee and against the Revenue. Resultantly, the present appeals are accepted and the impugned order dated February 18, 2008 (annexure A4) passed by the Tribunal is set aside.

