(2013) 04 P&H CK 0170

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15374 of 1992 (O and M)

Eicher Goodearth Limited and Another — APPELLANT

Vs

State of Haryana and Another — RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 25(5)

Citation : (2013) 65 VST 318

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : S.C. Sibal and V.S. Rana, for the Appellant; Mamta Singhal Tulwar, Additional Advocate-General, Haryana, for the Respondent

Judgement

Hemant Gupta, J.—The writ petition seeks quashing of order dated March 27, 1992 passed by the Assessing Authority, Faridabad, creating liability against the petitioners under the provisions of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act"). The liability created also included liability to pay interest u/s 25(5) of the Haryana General Sales Tax Act, 1973. In the writ petition, one of the contentions raised is that u/s 9 of the Act, purchase tax liability has been created if raw material is purchased in the State and used in manufacture of goods which are sent out from the State other than by way of inter-State sale or export which was against the judgment of the honourable Supreme Court in Goodyear India Limited Vs. The State of Haryana and Another, This was in the nature of tax on consignment of goods covered by entry 92B of List I. Further, contention raised is that liability to pay interest as per the scheme of the Act arises in respect of additional liability created under the assessment order and not on the date of transaction of purchase and sale or filing of return. The tax paid as per return does not carry any liability to pay interest till assessment is made. Reliance has been placed on the judgment of honourable Supreme Court in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another,

2. As regards challenge to the tax liability u/s 9 of the Act is concerned, it is not disputed by learned counsel for the petitioners that the matter is covered against the petitioner by the judgment of the honourable Supreme Court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., Only contention which has been pressed is about levy of interest for the period prior to the assessment. On this aspect the matter is covered in favour of the petitioner by the judgment of the honourable Supreme Court in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and learned counsel for the State has not been able to distinguish the applicability of the judgment. Accordingly, we allow these writ petition to the extent of levy of interest for the period prior to passing of the order of assessment. The Assessing Authority may issue fresh notice of demand accordingly by modifying the interest component in accordance with the principles laid down in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another,