(2010) 12 P&H CK 0523

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2403 of 1994

Eicher Tractors Limited and Another — APPELLANT

Vs

State of Haryana and Another — RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 25(5), 9

Citation : (2010) 12 P&H CK 0523

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This order will dispose of Civil Writ Petition Nos. 2403 of 1994 and 1767 of 1988 as common questions are involved in both these petitions.

2. Civil Writ Petition No. 2403 of 1994 seeks quashing of order dated 30.11.1993 passed by the Assessing Authority, Faridabad creating liability against the Petitioner under the provisions of 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 Sales Tax Act.

3. In the writ petition one of the contention 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 Hon''ble 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 92-B 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 Hon''ble Supreme Court in J.K. Synthetics Ltd. v. Commercial Tax Officer [1994]

94 STC 422.

4. As regards challenge to the tax liability u/s 9 of the Act is concerned, it is not disputed by learned Counsel for the Petitioner that the matter is covered against the Petitioner by the judgment of Hon''ble Supreme Court in Hotel Balaji''s case reported in (1993) 88 STC 98. 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 judgment of Hon''ble Supreme Court in J.K. Synthetics Ltd. v. Commercial Tax Officer [1994] 94 STC 422 and learned Counsel for the State has not been able to distinguish the applicability of the judgment.

5. Accordingly, we allow these writ petitions 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 Ltd.''s case (supra).

