(2011) 01 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : S.T.C. No. 3 of 2010 (O and M)

Excise and Taxation Commissioner APPELLANT

Vs

Sita Singh Engineers and Sons RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 5(3), 9(2)

Citation : (2011) 46 VST 526

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Vinod S. Bhardwaj, A.A.G., Haryana, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition has been filed u/s 9(2) of the Central Sales Tax Act, 1956 read with section 42(2) of the Haryana

General Sales Tax Act, 1973 seeking direction to the Haryana Tax Tribunal to refer for opinion of this court following questions of law:

(i) Whether, in the facts and circumstances of the case, the sale of bus bodies by the respondent to the exporter of passenger buses qualifies for

exemption u/s 5(3) of the Central Sales Tax Act, 1956?

(ii) Whether, on true and correct interpretation of the provision of section 5(3) of the Central Sales Tax Act, 1956, the supply of bus bodies by the

respondent to the exporter of passenger buses could be legally held to be ''for the purpose of compliance with the agreement or order for or in

relation to export'' of passenger buses?

(iii) Whether the Tribunal was justified in ignoring the apex court judgments in cases reported as TVL K.A.K. Anwar and Co. Vs. State of T.N., in case of Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, in

Vijayalaxmi Cashew Company and Others Vs. Dy. Commercial Tax Officer and Another, that was quoted and relied upon by the revisional

authority in his order dated February 25, 2002?

(iv) Whether, in the facts and circumstances of the case, the Tribunal was legally justified in deciding the appeal exclusively relying upon the

decision of the Karnataka High Court in Azad Coach Builders Pvt. Limited Vs. State of Karnataka, cited before it on behalf of the appeal and

absolutely without considering the decision in (2001) 123 STC 508 cited before it on the behalf of the State?

(v) Whether the Tribunal has failed to follow the judgment of the honourable Punjab and Haryana High Court in case of Hari Om Industry Vs.

State of Haryana and Another, wherein it has been held by the honourable High Court that the Sales Tax Tribunal, Haryana, can take different

view on merits in another year of the same assessee?

(vi) Whether the Tribunal was justified in brushing aside the reliance on judgments in TVL K.A.K. Anwar and Co. Vs. State of T.N., and (2000)

119 STC 369 without assigning any reason?

The assessee executed the work of fabrication for the exporter M/s. DCM Daewoo Motors (India) Ltd., Ghaziabad, U.P. and claimed exemption

in respect of the said turnover u/s 5(3) of the Central Sales Tax Act, which was allowed by the Assessing Authority. However, the revisional

authority exercised suo motu jurisdiction to interfere with the order of the assessment on the ground that penultimate transaction preceding the

export could not be held to be in the course of export. On appeal, the Tribunal set aside the view taken by the revisional authority as under:

We have considered the submissions made by both the parties and have also seen the facts on record. We have also gone through the judgments

relied upon by rival parties carefully. After perusal of the record, we do not agree with the contention of the State Representative that the

Assessing Authority had allowed exemption with respect to sale of bus bodies without obtaining the information required under col. 5 of form H.

The Assessing Authority in its order dated April 7, 1998, has clearly stated that the assessee had adduced documentary evidence, i.e., H form in support of his claim which are placed on the file after verification duly supported with purchase orders. This is a clear finding of fact recorded by

the Assessing Authority which is based on evidence. We do not find any reason to differ with the finding of the Assessing Authority. No weight can

be attached to this submission raised by the State Representative. As regards the question ''whether the transaction in question is covered by

section 5(3) of the Central Sales Tax Act. Or not.''? The case is fully covered by the judgment of honourable Karnataka High Court passed in the

case of Azad Coach Builders Pvt. Limited Vs. State of Karnataka, where it has clearly been held that (page 487 in 123 STC):

In the present matter it is not even the case of implied contract but of the specific contract which has been entered into by the exporter with the

foreign buyer to export the ""bus"" having the ""chassis"" and ""body"" of definite specification and thus all the conditions of section 5(3) of the Central

Sales Tax Act have been fulfilled. It is not in dispute that at the time when the orders were placed to the petitioner by the exporter, the exporter

had the pending orders with him and that the purchase from the petitioner was for the purpose of complying with the agreement or order for or in

relation to such export. The ""agreement"" or ""order"" has reference to those goods which are actually exported out of the country. The words ""in

relation to such export"" extend the scope of the exemption to the extent that even if there is no agreement or order but they are in relation to such

export, the exemption can still be claimed. This would cover not only the packing material, but all other such sales which are made to the exporter

for which by implication it could be considered that there was an agreement or order in respect thereof.

According to our considered view, so long as there is sale of both the items to constitute them as a complete item, the benefit cannot be denied.

This view has also been taken by the Sales Tax Tribunal, Haryana in the case of the appellant itself for the assessment year 1997-98 in STA No.

779 of 2001- 2002 and also by the Haryana Tax Tribunal in STA No. 508 of 2002-2003 in case of M/s. Paras Mechanical Industry, Faridabad.

Following the ratio of these judgments, we feel that the present case be also decided accordingly and consequently the present appeal is allowed.

The order of the revisional authority is quashed and that of the Assessing Authority is restored.

2. We have heard learned counsel for the petitioner.

3. The learned counsel for the petitioner is unable to dispute that against earlier order of the Tribunal, which has been followed in the present case,

the State did not take any remedy. He is also unable to dispute the applicability of the said judgment. His only contention is that the goods covered

by the transaction penultimate to export should be of the same goods which are exported. There is no merit in the submission. In the present case,

it has been specifically held by the Assessing Authority as well as by the Tribunal that the assessee had produced the relevant information in

prescribed form in support of its claim. Once transaction between the assessee and the exporter was integrated to the export, section 5(3) was

rightly held to be attracted following the view taken by the Karnataka High Court. The view taken by the Karnataka High Court, relied upon by

the Tribunal stands affirmed by the honourable Supreme Court in State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. and Another,

4. In view of the above, we are unable to hold that any question of law arises which may require adjudication by this court. The petition is

dismissed.