(2006) 09 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 3817 of 1987

H.M. Mehta and Co. — APPELLANT

Vs

The State of Haryana and Another — RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(1)
Haryana General Sales Tax Act, 1973 — Section 9

Citation : (2007) 10 VST 173

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R.C. Dogra and N.C. Doabia, for the Appellant; Ritu Bahri, DAG, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—Petitioner has approached this Court by filing the present writ petition challenging the order of assessment passed by Excise and Taxation Officer-cum-Assessing Authority, Dabwali leving purchase tax, u/s 9 of the Haryana General Sales Tax Act, 1973 (for short ''the Act''), on the purchase value of cotton which was transferred by the assessee to its head office at Bombay and from where the same was exported out of the Country. The purchase tax was levied keeping in view the fact that the assessee had transferred the goods out of the State otherwise than by way of sale to his head office at Bombay, which were ultimately exported out of the country. A similar issue came up for consideration before this Court in Nipha Export Pvt. Limited v. State of Haryana and Ors. (1998) 108 STC 337 SC wherein this Court held as under:

The orders passed by the Assessing Authority, the appellate authority and the Tribunal which have been impugned in this writ petition, clearly show that the petitioner-company has its registered office at Calcutta and the branch office at Faridabad. It has also been proved by the petitioner that the goods purchased by the branch office were sent to the head office at Calcutta for the purpose of export and the same were, in fact, exported. The Assessing Authority recorded a categorical finding that the record produced by the assessee showed that the orders were received directly by the head office from the foreign countries and the goods were not exported directly by the Faridabad dealer. The Tribunal did not record a finding that the head office at Calcutta and the branch office at Faridabad were two different entities. Rather, it held that this aspect of the case was not very much relevant. The Tribunal further observed that the State has not come out with a case that the goods were sold by the branch office at Faridabad to the head office at Calcutta; and, in fact, the movement of the goods from Faridabad to Calcutta was made in the course of export of goods outside the territory of India within the meaning of Section 5(1) of the Central Sales Tax Act, 1956 as it stood before April 1, 1976. However, the Tribunal rejected the claim of the petitioner on the ground that the movement of goods from branchy office at Faridabad to the head office being a movement preceding the one which caused movement of goods from Calcutta to outside India, cannot be regarded as taking place in the course of export of the goods out of the territory of India. In our considered opinion, the Tribunal and other adjudicating authorities have seriously erred in holding that the movement of the goods from Faridabad to Calcutta was not occasioned in the course of export out of the territory of India. In our opinion, the Tribunal has seriously erred in invoking the ratio of the decision of the apex Court in Serajuddin and Others Vs. The State of Orissa, without applying mind to the background in which the observations were made by the Supreme Court.

2. I have been informed that the judgment of this Court has been upheld by Hon''ble the Supreme Court in State of Haryana and Ors. v. Nipha Exports Pvt. Ltd. (2006) 27 PHT 339 (SC)p> 3. There is a clear finding in the assessment order that the tax on purchase value of goods was levied u/s 9 of the Act. Otherwise export of goods outside the country by the head office is not in dispute. Applying the ratio of judgment in Nipha Exports'' case (supra), the levy of purchase tax on the petitioner on the purchase value of goods, which were transferred to its head office and were exported from there out of the Country is set aside. The writ petition is accordingly allowed. The counsel for the petitioner states that the petitioner had furnished a bank guarantee in terms of the order passed by this Court. The same is directed to be released to the petitioner.

