
(2009) 05 P&H CK 0196
In the Punjab And Haryana At Chandigarh

Jai Durga Cotton Mills

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 13B

Citation : (2010) 29 VST 617

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under article 226 of the Constitution is directed against order dated December 19, 2001 (P9) passed by the Haryana Sales Tax Tribunal (for brevity, "the Tribunal") and order dated May 26, 2005 (P11) dismissing the application of the dealer-petitioner for review of the order dated December 19, 2001. The basic issue raised in the instant petition is whether sales to registered dealers are includable in notional tax liability of a "unit" as defined in Rule 28A(2)(n) of the Haryana General Sales Tax Rules, 1975 (for brevity, "the Rules").

Facts

2. Brief facts of the cases are that the dealer-petitioner is a partnership firm registered under the Haryana General Sales Tax Act, 1973 (for brevity, "the Act") and engaged in the business of cotton ginning at Hisar in the State of Haryana. It manufactures rui (cotton) from kapas/narma (unginned.cotton). The unit of the dealer-petitioner is exempted from payment of tax u/s 13B of the Act read with Rule 28A of the Rules : On September 12, 1995, an exemption/entitlement certificate was issued in favour of the dealer-petitioner for the period from December 9, 1994 to December 8, 2003, subject to overall monetary limit of Rs. 25.45 lacs (P4). The dealer-petitioner has claimed that the cotton manufactured by it is a declared goods u/s 14 read with the Schedule D of the Central Sales Tax Act, 1956 (for brevity, "the CST Act").

3. The assessments for the years 1994-95, 1995-96 and 1996-97 of the dealer-petitioner were finalised and all the sales of cotton made by it were not reckoned towards "notional sales tax liability" because the dealer-petitioner had obtained form ST XV from its purchasers (P5 colly) who have been registered. It has been asserted that firstly the subsequent dealers were liable to pay tax on the purchase of cotton being the last purchasers within the State. Secondly, the dealer-petitioner was not liable to pay any tax on declared goods in view of Schedule D. For the assessment year 1997-98 also the Assessing Authority accepted the plea of the petitioner and allowed deductions on the sales made to registered dealer against form ST XV and no tax in respect of those transactions was calculated towards notional sales tax liability. In that regard, order dated February 8, 1999 was passed by the Assessing Authority (P6).

4. However, the assessment for the year 1997-98, framed by the Assessing Authority was taken up for revision by the Deputy Excise and Taxation Commissioner, Hisar-respondent No. 3 on the premise that the dealer-petitioner could not be granted benefit of deduction for sales made to the registered dealers in view of provisions of first proviso to Rule 28A(4) of the Rules, which provides for calculation of notional sales tax liability on the "gross turnover" of the dealer. The dealer-petitioner took the plea before the revisional authority-respondent No. 3 that deductions admissible to it cannot be taken away u/s 27 of the Act and it is entitled to such deduction in view of circulars dated February 20, 1992 and May 19, 1994 (P1 and P2). It is pertinent to notice that the Excise and Taxation Commissioner issued the aforementioned circulars clarifying that notional sales tax liability would not be calculated in regard to the sales made to registered dealers in case form ST XV is produced by the exempted unit.

5. Disagreeing with the contentions raised by the dealer-petitioner, the revisional authority-respondent No. 3 passed an order dated July 25, 2001 (P7) holding that the dealer-petitioner is not entitled to any exemption for making sales to the registered dealers against form ST XV, especially in view of the fact that circulars/instructions dated February 20, 1992 and May 19, 1994 (P1 and P2) were specifically superseded by instructions dated March 25, 1997 (P3), whereby notional sales tax liability has to be reduced for all the sales made to registered dealers sales basis. The revisional authority accordingly revised the assessment order and raised an additional demand of Rs. 6,59,376 on account of aforementioned disallowance.

6. The dealer-petitioner assailed the order dated July 25, 2001 (P7) passed by the revisional authority before the Tribunal by filing an appeal (P8). The Tribunal passed an ex parte order upholding the view taken by the revisional authority and dismissed the appeal vide order dated December 19, 2001 (P9). The Tribunal has further held that the instructions issued by the Excise and Taxation Commissioner cannot override the provisions of the Act and the Rules. In that regard reliance has been placed by the Tribunal on the judgment of the honourable Supreme Court rendered in the case of Bengal Iron Corporation v.

Commercial Tax Officer [1993] 90 STC 47. On May 12, 2005 (P10), the dealer-petitioner filed an application for review of the order dated December 19, 2001, which was also dismissed, vide order dated May 26, 2005 (P11).

Contentions

7. Mr. Sandeep Goyal, learned Counsel for the dealer-petitioner, has submitted that the issue raised in the instant petition is squarely covered in favour of the petitioner by a judgment of the honourable Supreme Court rendered in the case of *State of Haryana v. Liberty Enterprises* [2009] 22 VST 1 : Civil Appeal No. 1618 of 2009, decided on March 17, 2009. According to the learned Counsel the only difference between the facts of the present case and the one decided by the honourable Supreme Court is that in the instant petition the question with regard to the sales made to the registered dealers against form ST XV is involved as against the export sales which was involved in the case of *State of Haryana Vs. Liberty Enterprises*, . According to the learned Counsel the "notional tax liability" of a unit as defined by Rule 28A(2)(n) of the Rules has to be worked out by including the amount of tax payable on the sales of finished goods/products of the eligible industrial unit under local sales tax laws as applicable from time to time. According to the learned Counsel, Section 27 of the Act defines the expression "taxable turnover" to mean that part of the dealer's gross turnover during any period which remains after deducting therefrom his turnover during that period, on account of, inter alia, sales made to registered dealers within the meaning of Sub-section (1)(a)(ii) of Section 27 of the Act. He has emphasised that the provisions have been considered in detail along with Rule 28A of the Rules by the honourable Supreme Court in *Liberty Enterprises* case [2009] 22 VST 1. According to the learned Counsel, the argument of the Department based on proviso (1) to Rule 28A(4) was rejected in para 14 of the judgment. Mr. Goyal has placed heavy reliance on paras 12 and 13 of the judgment where Rule 28A(2)(n) of the Rules has been interpreted. He contends that the only difference in the instant case is that it involves sales to the registered dealers whereas in *State of Haryana Vs. Liberty Enterprises*, , export sales were involved.

8. Ms. Ritu Bahri, however, has argued that sale to registered dealers would not be covered by the judgment of the honourable Supreme Court rendered in the case of *Liberty Enterprises* [2009] 22 VST 1 because such sales are entirely different than the export sales. She has submitted that sale of goods to dealers are not exempted from tax and such sales are only deferment of realisation of tax, which eventually has to be paid by the registered dealer. She also attempted to resurrect same argument which did not find favour before the honourable Supreme Court and has placed reliance to proviso (1) of Rule 28A(4).

9. After hearing learned Counsel for the parties and perusing the paper book with their assistance, we have reached the conclusion that this petition is squarely covered by the judgment of the honourable Supreme Court rendered in *Liberty Enterprises* case [2009] 22 VST 1. The provisions of Rule 28A(2)(n) defines "notional sales tax liability" the amount of tax payable on the sales of finished

products of the eligible industrial unit under the local sales tax law but for on exemption computed at the maximum rates specified under the local sales tax law. According to Clause (ii) of Rule 28A(2)(n) amount of tax payable under the CST Act on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce are also eligible. Section 27(1) (a) of the Act provides for deducting from "gross turnover" that part of sale and purchase of goods falling u/s 12 of the Act and also sales to registered dealers. In Liberty Enterprises case [2009] 22 VST 1, the honourable Supreme Court considered sale and purchase of goods falling u/s 12 of the Act. i.e., export sales whereas in the present case we are concerned with sales made to registered dealer. Therefore, we find that the matter is covered in favour of the dealer-petitioner and against the Revenue. Accordingly, we hold that sales made to registered dealers were not includible in the matter of calculation of "notional tax liability" during the period in question.

10. For the aforesaid reasons this petition succeeds. The order dated December 19, 2001 (P9) and order dated May 26, 2005 (P11) passed by the Tribunal are set aside and direction is issued to the respondents to deduct the sales made to the registered dealers while working out taxable turnover. Accordingly the same would also not be included in "notional tax liability".

11. The petition is disposed of in the above terms.