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(2014) 03 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : V.A.T.A.P. No. 128 of 2013 (O&M)

JMD Building Material Supplier APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 74 VST 53

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Rajiv Agnihottri, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate-General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—CM Nos. 4121 to 4124 CII of 2014.--Dismissed as withdrawn.

V.A.T.A.P. No. 128 of 2013

This order shall dispose of V.A.T.A.P. Nos. 128 and 129 of 2013 as learned counsel for the parties are agreed that the issue involved herein is identical. However, the facts have been extracted from V.A.T.A.P. No. 128 of 2013.

2. V.A.T.A.P. No. 128 of 2013 has been preferred by the appellant-assessee against the orders dated March 15, 2010, March 28, 2012 and February 6, 2013, annexures A1, A2 and A4, respectively, passed by the authorities below for the assessment year 2006-07, claiming the substantial questions of law reproduced in para 21 of the appeal.

3. Briefly, the facts necessary for adjudicating the controversy involved as narrated in the appeal, may be noticed. The appellant is engaged in the manufacturing and trading of crushing stones material, rori bajri and stone dust, etc. It purchases boulders from within the State of Haryana from one seller M/s. Faridabad Gurgaon Minerals Limited who has been given the area on lease by the Mines and Geological Department, Haryana, after payment of tax. M/s. Faridabad

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Gurgaon Minerals Limited is required to issue invoices given by the Department. The transactions cannot remain out of books of account. The appellant is filing returns and discharging tax obligations in accordance therewith and claiming input tax on the basis of the said invoices. During the assessment year 2006-07, the assessment was framed ex parte on March 15, 2010, annexure A1. The appellant could not appear and produce record so as to claim the benefit. The issue was decided against the appellant. On appeal, all the documents were produced before the appellate authority by the appellant but the appeal was dismissed vide order dated March 28, 2012, annexure A2, on the ground that no document could be produced in appeal. Aggrieved by the order, the appellant filed appeal before the Haryana Tax Tribunal, Chandigarh (in short, "the Tribunal"). Vide order dated February 6, 2013, annexure A4, the appeal was dismissed. Hence the present appeals by the appellant-assessee.

4. We have heard learned counsel for the parties and perused the record.

5. The primary question that arises in these appeals is whether the dealer can file tax invoices and forms VAT C-4 claiming benefit of input-tax credit at appellate stage and in that eventuality the liability of the dealer is to be re-determined.

6. The learned counsel for the parties are ad idem that the issue raised in these appeals is no longer res integra and stands concluded by the decisions of this court in CWP No. 13789 of 2011 titled as Vijay Cottex Ltd. Vs. State of Haryana, and CWP No. 15553 of 2011 titled as Jai Hanuman Stone Crushing Mills Vs. State of Haryana, decided on December 19, 2013, wherein it has been held that the dealer is entitled to produce form VAT C-4 and tax invoices before the assessing authority who shall verify the same and pass a fresh order, in accordance with law. In view of the above, the present appeals are disposed of in the same terms as in Vijay Cottex Ltd. Vs. State of Haryana, Jai Hanuman Stone Crushing Mills Vs. State of Haryana,

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