(1997) 01 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13585 of 1990

Madhu Industries APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 39

Citation : (1997) 116 PLR 400

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Hemant Kumar, for the Appellant; H.S. Hooda, AG and Partap Singh, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The petitioner is a registered dealer under the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956. It is engaged in the manufacturing process of pulses etc. in its Factory at Faridabad. It is also engaged in the sale of goods within the State of Haryana as well as outside the State of Faryana. Through this writ petition, it has questioned the legality of the orders passed by the Assessing Authority, Faridabad East levying purchase tax upon it and charging interest and penalty.

2. The writ petition, as it was originally instituted, did not contain challenge to the provisions of Section 9 and 15-A of the Haryana General Sales Tax Act, 1973. But in the amended writ petition, the petitioner has impugned these provisions in addition to its challenge to the orders passed by the Assessing Authority.

3. The main ground on which the petitioner has challenged the provisions of the Act of 1973 is that the levy of purchase tax has been declared unconstitutional by this Court in Ms Goodyear India Limited v. State of Haryana 53 STC 163 and Ms Bata India Limited v. State of Haryana 54 STC 226 and by the Supreme Court in Ms Goodyear India Limited v. State of Haryana 76 STC 71.

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4. Learned counsel for the petitioner fairly conceded that the judgments relied upon by the petitioner can no longer be regarded as laying down correct law in view of the subsequent decisions of the Supreme Court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., and M/s. Devi Dass Gopal Krishan Pvt. Ltd., etc. etc., Vs. State of Punjab and another etc. etc., , we may also take notice of the judgment of the Full Bench in United Receland Limited and Another Vs. The State of Haryana and Others, , and a recent decision dated 11.12.1996 in Civil Writ Petition No. 6646 of 1986 Good Year India Limited and Another Vs. The State of Haryana and Another, .

5. In view of the above, we do not find any illegality in the levy of purchase tax.

6. Having realised that he will not be able to seek nullification of the levy of purchase tax, the learned counsel prayed that the petitioner may be given liberty to challenge the levy of interest and imposition of penalty by filing appeal u/s 39 of the Act of 1973.

7. The learned Advocate General fairly submits that the petitioner may be given liberty to file appeal and avail other alternative remedies available to it under the statute.

8. Consequently the writ petition is dismissed subject to the liberty to the petitioner to file appeal against the levy of interest and penalty. We make it clear that in case the petitioner files appeal within 30 days from today against the order levying interest and penalty, then the same shall be heard and decided by the Appellate Authority on merits and shall not be dismissed on the ground of limitation. However, entertainability of the appeal will be subject to the fullfilment of the conditions specified in Section 39(5) of the Act.

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