
(2014) 05 P&H CK 0216
In the Punjab And Haryana At Chandigarh
Case No : VATAP No. 178 of 2013

Mahadev Enterprises

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 33(3), 36

Citation : (2014) 76 VST 273

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

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

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the assessee under section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated December 14, 2010 (annexure AT), dated October 12, 2012 (annexure A2) and dated September 17, 2013 (annexure A4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:

"(i) Whether the order passed by the Haryana Tax Tribunal, annexure A4, was right when Tribunal is an apex fact finding authority and inspite of the fact that it is as settled law that declaration forms can be produced even before the High Court and that powers of the appellate authority are co-terminus with that of the assessing authority?

(ii) Whether the Haryana Tax Tribunal was right in rejecting the appeal (annexure A4) only on one issue that in ex parte cases section 33(3) of the Haryana Value Added Tax Act, 2003, will be applicable and all the doors are closed for the assessee in ex parte proceedings?

(iii) Whether the order passed by the Haryana Tax Tribunal annexure A4 was right in not appreciating the provisions of section 33(3) of the VAT Act that when

all the record in the form of returns filed and substantiated by balance sheet, are part of returns filed, these provisions are not applicable?

(iv) Whether in the facts and circumstances of the case, Tribunal was right in deciding the case ex parte in the presence of proxy counsel when the arguing counsel was present before the honourable High Court?"

Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is engaged in the business of trading of iron and steel in the State of Haryana. For the assessment year 2004-05, the appellant filed quarterly returns and discharged tax obligations in accordance therewith. The case of the appellant was taken for scrutiny and notice in form N-2 was issued. The assessing authority framed assessment vide order dated December 14, 2010 (annexure A1) making additional demand of Rs. 17,95,785. Against the said demand, the appellant filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated October 12, 2012 (annexure A2) dismissed the appeal. Feeling aggrieved by the said order, the appellant filed an appeal dated January 14, 2013 (annexure A3) before the Tribunal. The Tribunal vide order dated September 17, 2013 (annexure A4) dismissed the appeal. Hence, the present appeal.

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

3. The primary question that arises in this appeal 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 redetermined.

4. The learned counsel for the appellant submitted that no notice for disposal of remand case was sent to the appellant and, therefore, the assessee could not produce the invoices and forms VAT C-4. It was urged that the appellant is in possession of these forms and the assessee be permitted to submit the same before the Assessing Authority.

5. The learned counsel for the parties are ad idem that the issue raised in this appeal is no longer res integra and stands concluded by the decisions of this court in C.W.P. No. 13789 of 2011 titled as Vijay Cottex Ltd. Vs. State of Haryana, titled as Jai Hanuman Stone Crushing Mills Vs. State of Haryana, both 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 appeal is disposed of in the same terms as in Vijay Cottex Ltd. Vs. State of Haryana, and Jai Hanuman Stone Crushing Mills Vs. State of Haryana, .