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**(2013) 05 P&H CK 0194**

**In the Punjab And Haryana At Chandigarh**

**Case No :** VATAP No. 110 of 2012 (O&M)

Mahindra and Mahindra Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

**Date of Decision :** 06-05-2013

**Acts Referred:**

**Citation :** (2014) 70 VST 332

**Hon'ble Judges :** Ritu Bahri, J;Hemant Gupta, J

**Bench :** Division Bench

## Judgement

Ritu Bahri, J.—This appeal u/s 36 of the Haryana Value Added Tax Act, 2003 (for short, "the Act") is against the order dated December 21, 2009 passed by the Value Added Tax Tribunal, Haryana, Chandigarh (for short, "the Tribunal"). We find that the following substantial questions of law arises for consideration:

(i) Whether, in the facts and circumstances of the case, the opportunity to produce declaration form D1, should have been granted to the appellant-dealer?

(ii) Whether, in the facts and circumstances of the case, the Tribunal could have decided in the case of the appellant-dealer, whether the Departments can make purchases of jeeps, etc., on declaration form D1?

The appellant-dealer charged four per cent tax from the Haryana State Electricity Board/Haryana Vidyut Prasaran Nigam on the basis of form C3. However, for the assessment year 2005-06, ETC-cum-Assessing Authority, Kamal, levied 12.5 per cent tax and charged differential tax from the appellant-dealer. The demand created was of Rs. 9,04,212 and interest of Rs. 11,86,769 was charged. A total demand of Rs. 20,90,282 was thus, created vide order dated March 9, 2009 (A1).

2. Feeling aggrieved against the said order, the appellant filed an appeal before the Joint Excise and Taxation Commissioner (A), Ambala, which was dismissed vide order dated June 3, 2009 (A2). It was held that the Nigam was controlled by the Government but still it did not make them Government Department to issue

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form C3. During the proceedings, the appellant submitted one D1 declaration form, which was issued by the Executive Engineer, DHBVNL for purchase of jeep. The said declaration form D1 was not produced earlier and it was held that it was not admissible in evidence.

3. The short question which arises for consideration of this court is that if a Nigam was not the Government Department and could not issue form C3, then whether the appellant can be permitted to produce the declaration form D1 and claim concessional rate of tax before the Assessing Authority. This question came up for consideration before this court in VATAP No. 2 of 2012 titled as Agrimas Chemicals Ltd. Vs. State of Haryana and Others, decided on February 12, 2013 of which one of us Ms. Ritu Bahri, J. was a member and this court held as under (pages 135 and 136 in 64 VST):

A Division Bench of this court in Deepak Radios Pvt. Ltd. Vs. Union Territory of Chandigarh and Another, (VATAP No. 56 of 2008 decided on March 18, 2009) has an occasion to consider the prayer made by an assessee-dealer where he could not produce the requisite forms C and D at the time of assessment. Following the law laid down by this court in Prestolite of India Limited Vs. The State of Haryana and Others, , the Division Bench of this court allowed the appeal and give a direction to the Assessing Authority to assess the genuineness of the documents/ forms in question and pass an appropriate order. It was made clear that if the documents were found to be fabricated then the Assessing Authority could saddle the dealer-assessee with penalty as per provision of the Act...

4. Following the condition of law laid down in Agrimas Chemicals Ltd. Vs. State of Haryana and Others, , order dated March 9, 2009 (A1) passed by Excise and Taxation Officer-cum-assessing authority, Karnal; order dated June 3, 2009 passed by Joint Excise and Taxation Commissioner (A) Ambala (A2) and order dated December 11, 2009 (A3) passed by the Tribunal are set aside and the matter is remitted back to the Assessing Authority to consider declaration form D1, answering questions of law in favour of the dealer and against the Department. The assessing authority is directed to decide the matter afresh in accordance with law. Disposed of.

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