

(2011) 03 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petitions No. 2392 of 2007 (O and M) and other connected petitions being Civil Writ Petition No. 15206 of 2006, 2333 and 2401 of 2007

M/s Dwarka Dass Trading Co.

APPELLANT

Vs

State of Haryana Etc.

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 5(1), 5(3)

Haryana General Sales Tax Act, 1973 — Section 13, 13B, 17, 17(1), 17A

Citation : (2011) 163 PLR 305 : (2011) 46 VST 561

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of Civil Writ Petitions No. 15206 of 2006, 2333, 2392 and 2401 of 2007 as it is stated by learned counsel for the parties that question of law involved in these petition is common.

2. In Civil Writ Petition No. 2392 of 2007 prayer is for quashing of orders passed under the provisions of Haryana General Sales Tax Act, 1973 (for short "the Act") to the extent of including turnover of sale of declared goods in taxable turnover contrary to the statutory scheme u/s 27(l)(b) of the Act

3. The petitioner is a registered dealer under the Act. It purchased cotton in the State and sold the same to a dealer at Bombay who exported the same.

4. The reason given by the Tribunal for not accepting the plea of the petitioner and upholding the orders of lower statutory authorities is that the goods did not qualify for being treated to be in the course of export. Relevant observations are :

In our opinion transactions cannot be viewed as the transactions effected by the exporter through the Commission Agency of the dealer. These transactions were the purchases of the dealer in his own account as the purchase of cotton made

by the dealer was made by the dealer and sold in the course of export u/s 5(3) of the Central Sales Tax Act on the strength of H forms. Even otherwise this point that the purchase" of cotton by this dealer as Commission Agent were for and on behalf of the exporter and these purchases were not in the own account of the dealer was not raised before the Assessing Authority and as such this point cannot be gone into now.

For the reasons given above it emerges that these transactions are not covered by Section 5(3) of the Central Sales Tax Act or Section 3 of the Central Sales Tax Act. These transactions cannot be treated as inter state sales calling for deduction u/s 27(I)(bXAXii) of the Haryana General Sales Tax Act, 1973 as inter state sales are deemed exports as defined in Section 3 of the Central Sales Tax Act, 1956 covered by Section 3. Deemed exports cannot be viewed as interstate sales. This appeal fails and is dismissed.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner submits that even if the goods are not sold in the course of export, turnover of sale in the course of inter-State sale has to be deducted from the taxable turnover. Reliance has been placed upon the order of this Court dated 15.7.2010 in LPA No. 227 of 2010 M/s Mahavir Parsad Lakshmi Chand v. The State of Haryana and others wherein identical issue was decided in favour of the assessee after analyzing the provisions of Sections 6 and 27 of the Act. The said provisions are as under:

Section 6:

(1) Subject to other provisions of this Act, every dealer whose gross turnover during the year immediately preceding the 27th day of May, 1971 and every other dealer shall on the expiry of thirty days after the date on which his gross turnover first exceeds the taxable quantum, be liable to pay tax under this Act on the sale or purchase of goods by him in the State at the stage hereinafter provided.

(a) on declared goods at the stage specified u/s 17;

(b) on goods notified u/s 18 at the stage of first sale as specified under that section;

(c) on all other goods at the stage of

(i) last sale when the goods are sold to any person other than a registered dealer who furnishes declaration as specified u/s 27 or as notified u/s 13 or as prescribed u/s 13 B of this Act.

(ii) Last purchase in all other cases except when the purchase is made on payment of tax.

Section 27:

Taxable Turnover:

(1) In this Act, the expression, "taxable turnover" means that part of a dealer's gross turnover- during any period which remains after deducting therefrom his turnover during that period.

(a) xxxx

(b) on account of purchase of goods which are specified in Schedule C or D and are liable to tax at the stage of last purchase as specified in Schedule C or Schedule D or the first proviso to Section 17- (A) which are sold during the year

(i) to a registered dealer other than a registered dealer with whom composition u/s 26 has been made and is in force.

Provided that in the case of sale to a registered dealer, a declaration as referred to in {the second proviso to sub clause (ii) of clause (a) of Sub-section (1) of this Section} given to him by the dealer to whom the goods are sold, is furnished by the dealer in the manner prescribed;

(ii) in the course of inter State trade or commerce within the meaning of Section 3 , of the Central Sales Tax Act, 1956.

(iii) in the course of export out of the territory of India within the meaning of sub section (1) of Section 5 of the Central Sales Tax Act, 1956.

(iv) to a dealer who is exempted u/s 13 of this Act

(B) xxxx

7. In the above order this Court held:

9. The question for consideration, thus, is whether purchase turnover of the assessee is liable to be excluded to the extent of inter State sale u/s 27 or the said benefit could be denied on the ground that inter State sale was not taxable?

10. In our view, answer has to be in favour of assessee on plain interpretation of Section 27. There is no reason to ignore plain language of the statute. The purchase turnover has to be excluded from the taxable turnover if qualifications laid down in the section are fulfilled one of which is inter State sale. There is no question of double benefit as sought to be projected on behalf of the Revenue.

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13. Since it is not disputed that the turnover in question is covered by taxable turnover u/s 6, only question to be considered is whether the same is excluded u/s 27. The mandate of Section 27 is "to exclude turnover" on account of purchase of goods specified in Schedule D liable to tax at the stage of last purchase and sold in the course of inter State trade.

14. Contention on behalf of the revenue that benefit under the Central Act have already been taken in respect of inter State sale or on account of export by the purchasing dealer, Section 27 will not be attracted, is not born out by the

provision or by any principle of interpretation or by any case law. On the contrary, the turnover of inter State sale being outside the purview of the State law, only relevant taxable turnover is the turnover of purchase which is liable to be excluded to the extent of sale in the course of inter State trade.

8. Learned counsel for the State has not been able to show any distinction to exclude the applicability of ratio of above case to the present case. The matter is, thus, covered in favour of the petitioner by the above order.

9. In view of above, these petitions are allowed and the impugned orders are quashed.

10. A photocopy of this order be placed on the file of each of the connected cases.