(2018) 11 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : Vat Appeal No. 53 Of 2018 (O&M)

M/s Gunno Knits Private Limited	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151
Haryana Value Added Tax Act, 2003 — Section 36

Citation : (2018) 11 P&H CK 0135

Hon'ble Judges : Ajay Kumar Mittal, J;Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Rajiv Sharma, Mamta Singla Talwar

Final Decision : Disposed off

Judgement

1. This is an application under Section 151 of the Code of Civil Procedure for amending the head note of VAT Appeal No. 85 of 2018 to the extent

that â??STA No. 790 of 2014-15 be read as â??STA No. 791 of 2014-15â??.

2. After perusing the application, the prayer made therein is allowed. Civil miscellaneous stands disposed of.

3. This order shall dispose of VATAP Nos. 53, 85 and 61 of 2018, as according to the learned counsel for the parties, the issue involved in all these

appeals is identical. However, the facts are being extracted from VATAP No. 53 of 2018.

4. VATAP No. 53 of 2018 has been filed by the appellant-assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, â??the

HVAT Actâ?) against the order 07.11.2017, Annexure A.3 passed by the Haryana Tax Tribunal, Chandigarh (in short, â??the Tribunalâ?) in STA

No. 791 of 2014-15 (STA Number corrected vide order of even date in CM No.

25465 of 2018) dismissing the appeal of the assessee challenging the

quantum and extent of taxability in case of job work of bleaching, washing, processing and dyeing of cloth and material used therein, claiming following

substantial questions of law:-

â??(i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the levy of tax on chemicals used as

consumables in the process of job work of dyeing of fabric by assuming that property in the goods has passed on to the principals?

(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the levy of tax on the entire value of

dyes used by the appellant in the job work process of dyeing of fabric ignoring the quantity of dyes, which were not transferred to the principals?

(iii) Whether on the facts and in the circumstances of the case, the findings of learned Tribunal are perverse insofar as it has been held that property

in the goods i.e. dyes and chemicals is transferred to be principals in the job work of dyeing the fabric?

(iv) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in placing reliance upon the judgment of Honâ??ble

Bombay High Court in the case of Commissioner of Sales Tax Vs. Matushree Textiles Limited, ignoring that the said judgment dealt with applicability

of works contract tax and not quantity of goods on which tax is to be levied?â??

5. A few facts relevant for the decision of the controversy involved as narrated in VATAP No. 53 of 2018 may be noticed. The appellant-assessee is

a dealer duly registered under the provisions of the HVAT Act and Central Sales Tax Act, 1956 (in short, â??the CST Actâ?). The appellant-

assessee is a textile processor and is engaged in the execution of job work. The grey fabric comes to the processors and after due

processing/manufacturing, the finished product is sent back raising an invoice on which Basic Excise Duty (BED) and Additional Excise Duty (AED)

is also leviable, although the rate of duty is NIL and as per the valuation prescribed in the relevant Act considering cost of grey fabric, processing

charges and other incidental charges etc. Thus, the processed fabric falls under the category of declared goods and the sales tax on such fabrics

stands already paid in the form of additional duty of excise under the Additional Duty of Excise (Goods of Special Importance) Act, 1957. The assessee filed all the four quarterly returns for the year 2007-08 along with annual return in Form VAT R-2. It claimed that no sales tax should be

levied on sale of textile under the provisions of the Sales Tax laws when additional excise duty is leviable as per the provisions of the statutes. While

framing the assessment, no discrepancy was found in the account books and accounting statements of the assessee, when the Assessing Authority

checked all the records submitted by the assessee. Cross entries from cash book to ledger and vice versa were also checked. Account books

produced by the assessee had been examined in detail. The Assessing Authority concluded assessment on the basis of observations and findings that

all the dyes and chemicals used in the execution of job work of bleaching and dyeing are transferred as in physical form or as their inherent properties.

Therefore, the property in goods passed on in the process of execution of job work should be taxed and the Assessing officer raised a tax demand of `

5,57,448/- under CST Act vide order dated 21.03.2011, Annexure A.1. Reliance was placed on the decision of the Bombay High Court in

Commissioner of Sales Tax Vs. Matushree Textiles Limited, (2003) 132 STC 539. Aggrieved by the order, the assessee filed an appeal before the

Joint Excise and Taxation Commissioner (Appeals) [JETC(A)]. It was pleaded that no such tax was payable by the assessee. The order of the

Assessing Authority was not supported by any reason/ground or report regarding the portion of the material which could technically be said to have

been transferred after the process of dyeing as there was no transfer of chemical on dyed fabric and the dyes transferred could be 3% only. Vide

order dated 17.02.2014, Annexure A.2, the JETC(A) rejected the appeal of the assessee on the ground that the Assessing Authority was the best

judge to ascertain the factual position as to how much transfer of property was involved in the process and it had rightly been ascertained by the

assessing authority. Still not satisfied, the assessee filed appeal before the Tribunal, inter alia canvassing that tax on value of chemicals consumed

during the process of dyeing and job work was not to be included for the purpose of levy of VAT under the HVAT Act/CST Act. It was also argued

that even the dye used in the process would not be entirely taxable as a substantial portion of the same is not transferred to the principal eventually.

The assessee also submitted a paper book containing the reports of technical personal certificates issued by various competent authorities justifying the stand of the assessee that chemicals are wasted during the process of dyeing of textiles and a part of dyes is made part of the final product sent to

the principal. Vide impugned order dated 07.11.2017, Annexure A.3, the Tribunal dismissed the appeal upholding the levy of tax on the entire value of

the chemicals and dyes used in the process irrespective of the fact whether property in goods had been transferred or not, relying upon its earlier

order dated 17.03.2017 passed in STA 96-97of 2013-14. Hence the instant appeals by the appellant-assessee.

6. We have heard learned counsel for the parties.

7. The matter is no longer res integra. This Court in a recent judgment in VATAP No.32 of 2017 (M/s AP Processors, Plot No.103, Sector 24,

Faridabad through its partner Shri Arvind Jain vs. State of Haryana through Principal Secretary to Government of Haryana, Excise and Taxation

Department, Civil Secretariat, Haryana, Chandigarh), decided on 17.5.2018 has already settled the legal issue against the respondent-revenue.

Therein, after considering the relevant statutory provisions and the entire case law on the point, it has been concluded that the chemicals used in the

job work are taxable but the pertinent question to be answered would be as to how much of dyes/colours are taxable which is transferred to the fabric

when the whole quantity of consumable is not transferred. It has also been held that while determining the actual loss of chemicals, dyes and colours

where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where

parties can produce evidence in respect of their respective claims/contentions. Accordingly, the impugned orders passed by the authorities therein

were set aside and the matters were remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes and colours that would

get washed out in the process of dyeing and printing of fabrics undertaken by the applicant. The operative paras of the judgment read thus:-

26. Having arrived at the conclusion that chemicals used in the job work are taxable but the pertinent question to be answered would be as to how

much of dyes/colours are taxable which is transferred to the fabric when the whole quantity of consumable is not transferred. In the present case, it

would be essential to determine the value of consumables transferred in the goods on which tax is leviable. While determining the actual loss of chemicals, dyes and colours where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the

Assessing Officer where parties can produce evidence in respect of their respective claims/contentions.

27. In the light of legal position enunciated hereinabove, the substantial questions of law as claimed are answered accordingly and the impugned orders

passed by the authorities are hereby set aside. The matter is remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes

and colours that would get washed out in the process of dyeing and printing of fabrics undertaken by the appellant. The Assessing Officer would

conduct a factual enquiry in this regard after giving liberty to the parties to produce evidence in respect of their respective contentions. Thereafter, he

would be at liberty to proceed in the matter for adding the percentage of chemicals, dyes and colours in the value of the turnover which are retained or

embedded on the textile or fabrics, as the case may be in accordance with law. The Assessing Officer shall do so after examining the relevant

statutory provisions and the case law on the point as noticed hereinabove. All the appeals stand disposed of accordingly.

It has been further held that what is taxable under the HVAT and CST Acts is the value of the goods which get transferred to the customer in the

execution of works contract either as goods or in any other form and not the value of goods used or consumed in the execution of works contract if

such user or consumption does not result in transfer of property in those goods in any form to the customer. The tax on the entire value of chemicals

consumed during the process of dyeing and job work are not to be included for the purpose of levy of VAT as substantial portion of the same is not

transferred to the principal eventually.

8. In view of the above, the present appeals are disposed of in the same terms as in VATAP No. 32 of 2017. As a result, the impugned orders passed

by the Tribunal in all the three appeals are set aside and the matter is remanded to the Assessing Officer to decide the matter afresh in view of the

observations made in the judgment rendered in M/s A.P. Processorâ??s case (supra), in accordance with law.

