(2014) 01 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 10393 and 10394 of 1995

Nuware India Limited APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 175 PLR 32 : (2014) 69 VST 98

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : P.C. Goyal, Advocate for the Appellant; Gagan Deep Singh Wasu, Additional Advocate-General, Haryana, Advocate for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—By way of these two petitions, the petitioner seeks issuance of a writ of certiorari for quashing impugned order dated December 6, 1994 as also consequent notices regarding disallowance of rebate under the Haryana General Sales Tax Act (in short, "the Act") and for recovery of tax in respect of assessment years 1985-86 and 1987-88. As these writ petitions involve common questions of fact and law, they are being taken up together for adjudication. Facts have been taken from CWP No. 10393 of 1995.

2. The petitioner-company is a manufacturer of melamine crockery which is packed in corrugated boxes, polythene bags and tissue paper. Such packing is necessary to avoid wear and tear in transit and to make the product marketable. The invoice which is raised by the petitioner for sale of such crockery, contains a foot-note to the effect that "our rates are inclusive of packing material costs". Polythene bags, tissue papers, corrugated boxes and other packing material are purchased by the petitioner after paying sales tax from a dealer who was being granted rebate of sales tax paid, by the assessing authority, i.e., respondent No. 4. However, pursuant to suo motu order dated September 12, 1988, respondent No. 3 issued notice to the petitioner on September 29, 1989 exercising powers of revision u/s 40 of the Act. This action of the revisional authority in issuing a show-cause notice was challenged by the petitioner before the Tribunal. Agreeing

with the pleas of the petitioner, the Tribunal had remanded the case to respondent No. 3 by making the following observation:

I have given thought to the pleadings of the parties and seen the facts on record. Under rule 24(j) of the Haryana General Sales Tax Rules the appellant is entitled for claim to deduct the amount of purchases of tax paid goods out of the gross turnover. Where no turnover is left after deducting from the gross turnover after the course of inter-State trade and commerce the appellant will still be entitled for the refund of tax paid by him, as such a relief is envisaged under the ibid. rule. In the situation, it is very necessary that the revisional authority has a fresh look on the levies vis-a-vis the applicability of rule 24(j) of the Haryana General Sales Tax Rules. I accordingly remand the case to the revisional authority to give a fresh look to the case in the light of the above observations.

3. Thereafter, respondent No. 3 vide order of October 5, 1992 rejected the claim of the petitioner and denied benefit of rebate of sales tax, as was granted by the Assessing Authority and rather sought to levy interest under the Act.

4. The order dated October 5, 1992 passed by the revisional authority, vide which orders dated August 12, 1988 for the assessment year 1985-86 and of January 15, 1992 for the assessment year 1987-88 of the assessing authority Faridabad was revised, was challenged by the petitioner before the Sales Tax Tribunal, Haryana. The plea of the petitioner did not find favour with the Tribunal and vide common order of December 6, 1994 affirming the order of the revisional authority, claim of the petitioner-assessee seeking rebate on sales tax on purchase of packing material for the assessment year 1985-86 was rejected. However, levy of interest imposed under sections 25(5) and 47 of the Act for the year 1987-88 was quashed, while maintaining levy of tax.

5. We have heard counsel for the parties while going through the paper book.

6. The stand of the assessee in these petitions is that packaging material such as corrugated boxes, etc., and other material for packing of crockery is purchased after payment of sales tax and as this packing material is exigible to tax at the first stage of sale in terms of section 18 of the Act, it is entitled to rebate under rule 24(3) of the Haryana General Sales Tax Rules, 1975 (in short, "the Rules") and thus, the assessee is entitled to rebate.

7. Per contra, stand of the Revenue is that the expenditure made on packing material is not to be accounted for rebate as the same is not used in the manufacture of crockery.

8. Without disputing that the assessee had purchased packing material for packaging of its product, i.e., crockery to make it marketable, it has been claimed by the Department that since packing material is not used in the manufacture of crockery, the assessee is not entitled to claim rebate under the Act.

9. The question posed for an answer in these petitions is as follows:

Whether the manufacturer is entitled to rebate of sales tax paid on purchase of material used for packing of crockery manufactured by it under provisions of the Act?

10. It is not disputed that the crockery items manufactured by the petitioner need to be packed in durable packing to ensure that they withstand and survive the rigours of transportation. It is also not in dispute that polythene bags, tissue papers and corrugated boxes, etc., are purchased by the petitioner after paying sales tax for packing of its products. At this stage, reference to rule 24(f) of the Rules, as it then existed, for ready reference is appended as below:

24. In calculating the taxable turnover, a dealer may deduct from his gross turnover,--

(a) to (i) . . .

(j) the purchase value of goods which have been subject to tax at the first stage u/s 18 of the Act, used by him in the manufacture of goods other than those specified in the schedule 8, or purposes specified in section 24 of the Act:

11. Once the goods used in manufacturing had suffered payment of tax at first stage and the dealer had appended ST forms claiming deduction with its return for the relevant assessment year, then in terms of rule 24 (j), the dealer is entitled to rebate.

12. Affirming the order dated November 28, 1994 of the revisional authority, the Tribunal vide the impugned order had observed as under:

I have considered the submissions of the parties and have also seen the facts on record as also the judgments relied upon by both the parties. The sole point for consideration before the Tribunal in both these cases is that whether the appellant was entitled to rebate under rule 24(j) of the Haryana General Sales Tax Rules, 1975. As per rule 24A of the Haryana General Sales Tax Rules, 1975, with effect from January 1, 1988 the rebate could be allowed if the goods have been sold. The corrugated boxes, i.e., the packing material in this case, has been used in the packing of goods, i.e., the crockery goods and were not sold as such. There is no express or implied contract of sale of corrugated boxes in the present case. Furthermore, with effect from December 21, 1987 rebate was not permissible under rule 24-J of the Rules, 1975 as for claiming such a rebate the following conditions must be there that:

1. The goods must be used in the manufacture of goods other than those specified in Schedule IB and that,

2. The manufactured goods must be sold in or from the State of Haryana.

13. During pendency of the writ petition, drastic changes came about in the Principal Act, i.e., the Haryana General Sales Tax Act. By way of C.M. No. 21305 of 2000 moved in this writ petition, it has been brought out that by Act No. 7 of 1996 dated March 27, 1996, application with retrospective effect from May 27,

1971, an Explanation has been added which in essence renders the restrictive opinion recorded by the Tribunal and others authorities null and void. It is worth notice that neither any reply to this Civil Misc. application of the assessee was furnished nor there was any denial of such amendment brought about in the principal Act. The provision of the amending Act reads as follows:

In section 15A of the Principal Act, the following Explanation shall be added and shall be deemed to have been added with effect from May 27, 1971, namely:

Explanation.--For the purpose of this section goods used in manufacture shall be goods by a dealer as raw materials, processing materials, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale and shall include containers and packing materials used for packing of the goods manufactured or processed.

14. Section 15A deals with "reduction or refund of tax in certain cases". The last two lines of this Explanation have been underlined to emphasize the significance thereof. There does not remain any doubt that packing material used for packing of manufactured goods has also been included in the term the goods used in manufacture on the same terms as raw material, processing material, fuel or lubricants which are actually used in the manufacturing of goods.

15. After going through the Explanation (appended to section 15A of the Act) which became available for benefit of the dealer retrospectively, there does not remain any dispute that adjustment, on the purchase made by the petitioner against payment of tax at the first stage, is very much available retrospectively from May 27, 1971. The Tribunal did not have the benefit of the amendment. The State has not contested the amendment of section 15A of the Act.

16. In this view of the matter, as discussed above, the impugned orders are not sustainable in law.

17. Consequently, the writ petitions are allowed and the impugned orders and recovery proceedings arising therefrom are quashed. The Assessing Officer is directed to calculate the quantum of adjustment of sales tax paid on the purchases made by the petitioner at the first stage in purchase of packing material used for packing of the goods manufactured by it in accordance with law.