
(2006) 09 P&H CK 0164
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2414 of 1987

Patel Cotton Company Ltd.	Vs	APPELLANT
The State of Haryana and Another		RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(1)
Haryana General Sales Tax Act, 1973 — Section 47

Citation : (2007) 10 VST 30

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R.C. Dogra and N.C. Doabia, for the Appellant; Ritu Bahri, DAG, for the Respondent

Judgement

Rajesh Bindal, J.—This order will dispose of CWP Nos. 2414, 2415, 3818 and 1345 of 1987. However, the facts are being taken from CWP No.2414 of 1987.

2. The petitioner approached this Court directly by filing the present writ petition challenging the order of assessment made by the Assessing Authority. Relying upon an order passed by Sales Tax Tribunal, in the case of Nipha Exports Pvt.Ltd., it was made liable to pay purchase tax on the goods purchased in State of Haryana, which were transferred by the assessee to its head office at Bombay from where those were exported out of the country. The assessee was also made liable to pay interest on account of delayed payment of tax and penal action u/s 47 of the Haryana General Sales Tax Act, 1973 (for short "the Act") was also contemplated.

3. Facts in much details are not required to be stated in the order as the order passed by the Tribunal in the case of Nipha Exports Pvt. Ltd., which was relied upon by the assessing authority to levy tax on the petitioner, was reversed by this Court in Nipha Export Pvt. Limited v. State of Haryana and Ors. (1998) 108 STC 337 P&H wherein this Court held as under:

The orders passed by the Assessing Authority, the appellate authority and the Tribunal which have been impugned in this writ petition, clearly show that the petitioner-company has its registered office at Calcutta and the branch office at Faridabad. It has also been proved by the petitioner that the goods purchased by the branch office were sent to the head office at Calcutta for the purpose of export and the same were, in fact, exported. The Assessing Authority recorded a categorical finding that the record produced by the assessee showed that the orders were received directly by the head office from the foreign countries and the goods were not exported directly by the Faridabad dealer. The Tribunal did not record a finding that the head office at Calcutta and the branch office at Faridabad were two different entities. Rather, it held that this aspect of the case was not very much relevant. The Tribunal further observed that the State has not come out with a case that the goods were sold by the branch office at Faridabad to the head office at Calcutta; and, in fact, the movement of the goods from Faridabad to Calcutta was made in the course of export of goods outside the territory of India within the meaning of Section 5(1) of the Central Sales Tax Act, 1956 as it stood before April 1, 1976. However, the Tribunal rejected the claim of the petitioner on the ground that the movement of goods from branchy office at Faridabad to the head office being a movement preceding the one which caused movement of goods from Calcutta to outside India, cannot be regarded as taking place in the course of export of the goods out of the territory of India. In our considered opinion, the Tribunal and other adjudicating authorities have seriously erred in holding that the movement of the goods from Faridabad to Calcutta was not occasioned in the course of export out of the territory of India. In our opinion, the Tribunal has seriously erred in invoking the ratio of the decision of the apex Court in *Serajuddin and Others Vs. The State of Orissa*, without applying mind to the background in which the observations were made by the Supreme Court.

4. It has also been brought to my notice that Nipha Export's case (supra) has been upheld by Hon"ble the Supreme Court in (2006) 27 PHT 339

5. The learned Counsel for the State contended that the assessee can get the benefit of the law laid down by this Court, as upheld by Hon"ble the Supreme Court, only in case it is proved on record that the goods transferred by the assessee to head office at Bombay, in fact have been exported out of the country and there being no specific findings to that effect in the order of assessment, the petitioner cannot be given benefit of the judgment straightway. Even the counsel for the petitioner also could not dispute this position.

6. After hearing the counsel for the parties, I find that the order passed by the Tribunal in Nipha Export's case, which was relied upon by the Assessing Authority to levy tax and interest on the petitioner, having been reversed by this Court, the matter needs re-examination by the Assessing Authority. Accordingly, order Annexure P-1 is quashed and matter is remanded back to the Assessing Authority for a fresh consideration in accordance with law.

7. The petitioner is directed to appear before the Assessing Authority on 27.10.2006.

8. Regarding the prayer for release of bank guarantee furnished by the petitioner in terms of directions given by this Court, it is directed that the assessing authority shall decide the matter finally within three months from the date of appearance of the petitioner on 27.10.2006 and thereafter the bank guarantee shall be dealt with in terms of the order of assessment. The writ petition is disposed of in the manner indicated above.