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(2015) 09 P&H CK 0355

In the Punjab And Haryana At Chandigarh

Case No : VATAP Nos. 183 and 184 of 2014 (O and M)

Relaxo Footwear Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 36

Citation : (2015) 09 P&H CK 0355

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Avneesh Jhingan, Advocate, for the Appellant; Mamta Singla Talwar, DAG, for the Respondent

Judgement

Ajay Kumar Mittal, J.—For the reasons stated in the application, delay of 492 days in filing the appeal is condoned.

2. This order shall dispose of two appeals bearing VATAP Nos. 183 and 184 of 2014 as according to the learned counsel for the parties, the issue involved therein is identical. For brevity, the facts are being extracted from VATAP No. 183 of 2014.

3. VATAP No. 183 of 2014 has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 15.1.2013 (Annexure A-3) passed by the Haryana Tax Tribunal, Haryana, Chandigarh (hereinafter referred to as "the Tribunal") in STA No. 869 of 2012-2013 claiming the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the declaration forms in the possession of the appellant dealer should be permitted to be taken on record and consequential benefit be granted?

(ii) Whether in the facts and circumstances of the case, the declaration forms can be produced at the appellate stage and even at the High Court stage?

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(iii) Whether in the facts and circumstances of the case, the appellant dealer should be made to suffer for the fault of the counsel who without of the knowledge of the dealer and for reasons best known to him did not press the said issue at the final arguments before the Tribunal?

(iv) Whether in the facts and circumstances of the case, the benefit given under Rule 28B covers purchase tax liability?

(v) Whether in the facts and circumstances of the case, the order Annexure A-3 so far as it decides the purchase tax issue relied upon contradictory findings?

4. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacture and sale of rubber footwears. The assessee was granted tax benefit under Rule 28B of the Haryana General Sales Tax Rules, 1975 (for brevity "the Rules") and was granted exemption certificate valid for a period from 15.10.1999 to 14.10.2006 for a maximum benefit limit of Rs. 7,07,77,000/-. During the year in question, the assessee filed the statutory returns. The assessing authority finalized the assessment vide order dated 4.8.2004 (Annexure A-1) at Rs. 7,24,17,810/-. The said order was taken up for revision. The revisional authority vide order dated 9.12.2004 (Annexure A-2) revised the order by disallowing adjustment of purchase tax against notional tax liability and the pro-rata computation of tax made by the assessing authority. Aggrieved by the said order, the appellant filed an appeal before the Tribunal who vide order dated 15.1.2013 (Annexure A-3) partly allowed the appeal by accepting the pro-rata calculation of tax made by the assessing authority. The Tribunal, however, upheld the disallowance of purchase tax being adjusted against the notional tax liability. Hence, the present appeal.

5. We have heard learned counsel for the parties and perused the record.

6. The issues that arise for adjudication in these appeals are:-

(i) Whether the appellant is entitled to produce the STD-IV declaration and ST-14B Forms, even before the appellate authority?

(ii) Whether the amount of purchase tax can be demanded from the appellant under Rule 28B(3)(j) of the Rules especially when it had been granted exemption from payment of tax?

7. Issue No. (i) is covered by the decision of this Court in Jai Hanuman Stone Crushing Mills, Bhiwani v. The State of Haryana and others (2014) 47 PHT 172 (P&H), wherein this Court while disposing of the matter held that the petitioner therein is entitled to produce the tax invoices, Forms VAT C-4 and Forms VAT D-1 before the Assessing Authority who thereafter has to determine the tax liability by deciding the matter by passing a fresh order in accordance with law. In this view of the matter, the petitioner is entitled to produce the STD-IV declaration and ST-14B Forms before the Assessing Authority who shall thereafter examine the tax liability and decide the matter by passing a fresh order, in accordance

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with law.

8. Adverting to issue No. (ii), Rule 28B(3)(j) of the Rules describes "eligibility certificate" in the following terms:-

"(j) "exemption certificate" means a certificate granted in form S.T. 73A by the Deputy Excise and Taxation Commissioner of the District to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from payment of sales tax on the sale of finished products."

A plain reading of Rule 28B(3)(j) of the Rules clearly spells out that the beneficiary unit is entitled to exemption from payment of sales tax on the sale of finished products and not exemption from the payment of purchase tax. In other words, the unit is entitled to exemption from the payment of sales tax only on the sale of goods manufactured by it and any purchase tax leviable was recoverable from the said unit. Thus, the Tribunal was right in holding that the notional tax liability calculated for the purposes of setting off against the tax exemption limit shall be the amount of tax payable on the sale of furnished products under the Local Sales Tax Law and the Central Sales Tax Act, 1956 which does not include purchase tax and, therefore, the amount of purchase tax levied was recoverable from the appellant. The findings recorded by the Tribunal read thus:-

"3. The second issue raised by Mr. K.K. Gupta, learned counsel for the appellant, is that the amount of purchase tax assessed cannot be demanded from the appellant-company because it had been enjoying exemption from payment of tax during the year 2000-01 and as per the interpretation of law, vide K.K. Spinners'' case decided on 21.7.2000, reported in (2000) 16 PHT 265, which held the field at the relevant time, though purchase tax was leviable yet it was not recoverable and was to be adjusted against the tax exemption limit, so the revising authority could not have demanded the purchase tax from the company as per the law. The learned State representative had defended the impugned order on this issue stating that the correct position at law finally is that the purchase tax leviable is recoverable from an exempted unit as held by the Punjab and Haryana High Court in M/s. Aggarwal Rice & General Mills vs. The State of Haryana and others C.W.P No. 15133 of 2006 decided on January 14, 2009. We have applied our mind on this issue deeply. The case of K.K. Spinners cited by the Ld. Counsel for the appellant related to rule 28A while the exemption granted to the appellant-company was under rule 28B. It is seen, as has been mentioned by the revising authority, from the definition of exemption certificate given in clause (j) of sub-rule (3) of rule 28B that it entitles the beneficial unit to avail of exemption from payment of sale tax on the sale of finished products (and not exemption from payment of purchase tax). Further, first proviso to sub-rule (5) of rule 28B states that in the case of exemption, the benefit shall extend to tax on sale turnover of goods manufactured by the unit. Thus, a beneficiary unit under rule 28B was entitled to exemption from payment of tax only on the sale of goods manufactured by it, so any purchase tax leviable was recoverable from the unit.

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Further, the definition of notional sales tax liability (NSTL), calculated for the purpose of setting off against the tax exemption limit, states, vide clause (m) of sub-rule (3) of rule 28B, that it means the amount of tax payable on the sale of finished products under the local sales tax law (HGST Act) and the CST Act; and in clause (b) of sub-rule (8) of rule 28B, it is stated, "...The (exemption/entitlement) certificate issued shall be valid unless cancelled or withdrawn from the date of commercial production to the 30th June next or when notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier." It is also evident from these provisions that tax exemption is to be computed in terms of NSTL and NSTL does not include purchase tax. So any purchase tax leviable is recoverable. We may further observe that the case of K.K. Spinners (supra) was not cited before the revising authority and finally the law on the issue supports his view. Therefore, his decision on the point is not per incuriam. In the light of the above discussion, we hold on this point that the amount of purchase tax levied is recoverable from the company and the impugned order is correct to this extent."

9. No illegality or perversity could be demonstrated in the aforesaid findings recorded by the Tribunal which may call for interference by this Court on this question. Accordingly, issue No. (ii) is decided against the assessee.

10. As a result, the appeals stand disposed of in the manner indicated above.

11. For orders, see VATAP No. 183 of 2014 (M/s. Relaxo Footwear Ltd., Bahadurgarh v. State of Haryana).

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