(2008) 09 P&H CK 0131

In the Punjab And Haryana At Chandigarh

State of Haryana — APPELLANT

Vs

Haryana Bone Mills — RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 42

Citation : (2009) 23 VST 228

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

Bench : Division Bench

Judgement

1. This reference has been made u/s 42 of the Haryana General Sales Tax Act, 1973 (in short, "the Act") at the instance of the Revenue for the assessment years 1967-68, 1968-69, 1969-70, 1972-73 and 1974-75, for opinion on the following questions:

1. Whether the scope of Rule 29(v) of the Punjab General Sales Tax Rules, 1949 is restricted to intra-State sales in view of the fact that the State Legislature can legislate only in respect of transactions of sales and purchase within the State and that it does not apply to sale of goods in the course of export outside India?

2. Whether any effect could be given to Rule 29(v) of the Punjab Rules, for the purposes of allowing deductions from the gross turnover of the dealer in respect of goods exported out of the territory of India through Bombay dealers in view of the interpretation of Section 5(1) of the Central Sales Tax Act, 1956 by the honourable Supreme Court in the case of Mod. Serajuddin v. State of Orissa [1975] 36 STC 136 prior to its amendment with effect from April 1, 1976?

(3) Whether the assessee is debarred from claiming exemption on export of goods out of the territory of India through an intermediary and not directly to the foreign buyers, for the period prior to April 1, 1976?

2. The assessee claimed deduction under the Central Sales Tax Act, 1956 on account of export of bone meal out of territory of India made through M/s. Haryana Trading Company and Reliable Traders, both of Bombay. It was not a

direct contract between the assessee and the foreign buyer. The assessing authority disallowed the claim holding that the sales were for export and not in the course of export. The Tribunal, however, decided in favour of the assessee. It appears that there was conflict in the order of the Tribunal for different years.

3. The learned Counsel for the Revenue fairly states that the matter has since been covered by judgment of this Court in Regular Traders, Madhopuri, Ludhiana v. State of Punjab [2007] 10 VST 245 : [2006] 28 PHT 87. In the said judgment, following the earlier judgment of the Division Bench of this Court in State of Haryana v. Liberty Footwear Co. [2006] 145 STC 532 : [2005] 25 PHT 427, it was held that having regard to language of Rule 29 of the Rules, judgment of the honourable Supreme Court in Mod. Serajuddin v. State of Orissa [1975] 36 STC 136 on interpretation of Section 5 of the Central Sales Tax Act, 1956 was not applicable and the State law was more liberal which provided deduction from the gross turnover of goods proved to be exported out of territory of India whether by one transaction or by series of transactions, i.e., either directly by the dealer or through intermediary or through consecutive sales. In the present case, admittedly, goods have been exported out of India, though the dealer has not directly entered into contract of export but has exported the goods through the intermediary.

4. In view of the above position, following the earlier judgments of this Court, the questions referred have to be answered against the Revenue and in favour of the assessee.

5. The reference is disposed of accordingly.