
(2010) 09 P&H CK 0359
In the Punjab And Haryana At Chandigarh
Case No : GSTR No. 6 of 2009

State of Haryana

APPELLANT

Vs

Sumitra Industries

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (2012) 51 VST 508

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

Bench : Division Bench

Advocate : Gagandeep Singh Wasu, Deputy-A.G, for the Appellant; Avneesh Jhingan, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The Haryana Tax Tribunal, Chandigarh (in short, "the Tribunal") has referred the following two questions for determination by this court u/s 42 of the Haryana General Sales Tax Act, 1973 (for short, "the Act"), vide order dated May 15, 2009, passed in Sales Tax Miscellaneous (Reference) No. 43 of 2004-05: (1) What is the maximum rate of sales tax applicable on goods sold to a Government Department against certificate in form D by an industrial unit holding exemption certificate under rule 28A of the Haryana General Sales Tax Rules, 1975 for the purpose of computing notional sales tax liability as defined in clause (n) of sub-rule (2) of rule 28A?

(2) If answer to the above question is in favour of the Revenue, then, whether the instructions issued by the Excise and Taxation Commissioner to the Assessing Authorities vide Memo No. 1314/S.T.I. dated May 19, 1994 but later superseded vide memo dated March 25, 1997, shall act as an estoppel to applying the higher rate of tax than the concessional rate for the period before March 25, 1997?

In short, the facts are that the respondent-assessee was an industrial unit and holding exemption certificate issued under rule 28A of the Haryana General Sales

Tax Rules, 1975 (in short, "the Rules") which was valid for a period of nine years, i.e., from November 28, 1995 to November 27, 2004. By virtue of exemption certificate the respondent had a legal right to avail of exemption from payment of sales tax, subject to further cumulative notional sales tax liability, (NSTL) not exceeding Rs. 4,42,500. In the year 1995-96, the respondent made sales of Rs. 11,18,147 to Government Departments against certificates in form D. The amount of sales was assessed by the assessing authority vide order dated September 4, 1997 by taking NSTL to be Rs. 49,198, i.e., at the usual rate of sales tax of 4.4 percent applicable on the sale of goods made to the Government Departments against form D. Similarly, in respect of the year 1996-97, the assessing authority assessed sales of Rs. 46,93,017 made to Government Departments against certificate in form D with NSTL of Rs. 1,87,721. As per the respondent, the cumulative NSTL for the year under reference even after addition of NSTL of the two years, 1995-96 and 1996-97 remained below the ceiling of Rs. 4,42,500 as permissible under the exemption certificate under rule 28A of the Rules, but the Deputy Excise and Taxation Commissioner-cum-Revising Authority, Jind (in short, "the DETC") took up the assessment made for the above two years in revision and assessed NSTL on sales made to the Government Department against certificate in form D, at the maximum rate of sales tax applicable under the provisions of the Act on sale of the said goods, vide order dated May 19, 1999. This resulted in exhausting of the prescribed limit and thereby making a demand of Rs. 1,10,443 from the respondent.

2. In appeal carried by the assessee, the Tribunal concurred with the computation made by the assessing officer. The orders of the revising authority were, thus, quashed and that of the assessing officer restored, vide order dated May 15, 2000. The State of Haryana sought review of the order passed by the Tribunal. The review application was dismissed vide order dated May 18, 2004, observing that there was no error in deciding the appeal and as such the parameters for taking up the matter for review u/s 41 of the Act were not met.

3. The State of Haryana thereafter moved a reference application before the Tribunal proposing certain questions of law, and this is how the Tribunal has retrained the aforesaid two questions and referred to this court for its opinion.

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

5. Adverting to the first question, it was contended by the learned counsel for the petitioner that the sales made to the Government Department was liable at the maximum rate of sales tax, which was applicable on the goods sold to the Government Departments by the dealer-assessee, for the purpose of NSTL, as envisaged under clause (n) to sub-rule (2) of rule 28A of the Rules. The submission of the learned counsel for the petitioner has been stoutly opposed by the assessee-dealer who placed reliance on various judgments of this court, namely, *Kagaz Print-N-Pack (India) Pvt. Ltd. Vs. State of Haryana*, *Jai Durga Cotton Mills Vs. State of Haryana and Others*, , *Mohit Cotton & Oils Pvt. Ltd. v. State of Haryana* [2009] 34 PHT 392 (P&H), and of the apex court in *State of*

Haryana Vs. Liberty Enterprises, The learned counsel submitted that the rate of sales tax on the sales made to the Government Departments against form D shall be calculable by applying usual rate of sales tax of 4.4 percent as applicable to the said transaction under the Act for determining NSTL, and not the maximum rate as urged by the State.

6. We find merit in the submission made by the learned counsel for the assessee-dealer. In order to ascertain the notional sales tax liability for the purpose of deduction thereof from the quantum of benefit of exemption which is admissible to a dealer, the sales tax shall be calculated at the rate applicable to the transaction under the Act and not at the maximum rate of sales tax. This court in *Kagaz Print-N-Pack (India) Pvt. Ltd. Vs. State of Haryana*, dealing with similar issue held as under:

...That article 286 of the Constitution of India clearly debars the State Legislature to impose tax on the turnover of goods exported outside the country. Section 12 of the Act itself provides that notwithstanding anything contained in the Act, inter alia, tax on sale of goods in the course of export outside the territory of India shall not be imposed. Further, statutory form ST-9 on which returns are to be filed by a dealer clearly provides that gross turnover would be a result after deduction from the total receipts, inter alia, on account of export of goods outside the territory of India. The purpose and object with which the provisions for exemption have been added in the statute is that exemption is granted of the tax which is payable as per the provisions of the Act, as that can be considered to be the real incentive in the competitive market and not that tax is first calculated on the transactions on which no tax as such is leviable/payable under the Act and then grant exemption thereof. Therefore, the turnover on which notional tax liability is to be calculated for the purpose of deduction thereof out of the quantum of benefit of exemption being claimed by a dealer under rule 28A of the Rules does not include export sales.

7. The aforesaid view stands approved by the apex court in *State of Haryana Vs. Liberty Enterprises*,

8. The Tribunal was, thus, right in allowing the appeal of the respondent-dealer. We accordingly answer question No. 1 against the petitioner-State of Haryana and in favour of the respondent-dealer.

9. Adverting to the second question, in view of answer to question No. 1 in favour of the assessee-dealer, question No. 2 does not survive. Accordingly, the reference is answered against the State of Haryana and in favour of the assessee.