
(2010) 08 P&H CK 0453

In the Punjab And Haryana At Chandigarh

Case No : V.A.T. Revision No. 8 of 2010 (O and M)

State of Punjab and Others

APPELLANT

Vs

Malwa Cotton and Spinning Mills Ltd.

RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 13(4), 13(5), 68(1), 85

Citation : (2011) 39 VST 65

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This petition has been filed u/s 68(1) of the Punjab Value Added Tax Act, 2005 (for short, "the Act") against order dated May 24, 2006 read with order dated January 23, 2009 passed by the VAT Tribunal, Punjab, proposing to raise following substantial questions of law:

- (i) Whether the order passed by the Excise and Taxation Commissioner is sustainable in law ?
- (ii) Whether the Respondent is entitled to input-tax credit on the purchase of diesel used in the generation of electrical energy for captive consumption especially when the word diesel has been specifically/specially mentioned in clause (b) of Section 13(5) and excluded from Section 13(4) of the Act ?
- (iii) Whether the learned Tribunal has misinterpreted the provisions of Sections 13(4), 13(5), and 13(5)(i) of the Act ?
- (iv) Whether the order dated May 24, 2006 passed by the learned Tribunal is sustainable in law under the facts and circumstances of the case ?
- (v) Whether the Respondent is entitled to input-tax credit on the purchase of diesel at the rate prescribed in Section 13(4) of the VAT Act especially when the word "diesel" is not mentioned in it ?

2. The Assessee is a registered dealer under the provisions of the Act. The

Assessee made an application u/s 85 of the Act (which is in the nature of advance ruling), seeking determination of question whether input-tax credit paid on purchase of diesel used in generation of electric power for captive use in the factory of the Assessee-company was available u/s 13(5)(i) of the Act. The Excise and Taxation Commissioner determined the question against the Respondent and held that input-tax credit could not be payable in respect of tax paid on purchase of diesel used in generation of electric power for captive use in the factory of the Assessee. The Commissioner after referring to above provision, held as under:

...This clause is a general clause (b) of Sub-section (5) which debars availability of input-tax credit on petrol, diesel, etc., except to a person who is in the business of selling these items. Clause (i) is not a non obstante clause that could overrule clause (b) of Sub-section (5). Had the intention been to allow input-tax credit on petrol, diesel, etc., when used for captive generation power, these items could well have been included in Sub-section (4) itself.

3. This view has been set aside by the Tribunal. The Tribunal reversing the said view held as under:

The case of the Appellant-company stands fully covered by the provisions of clause (i) of Sub-section (5) of Section 13 as it is utilizing diesel in the manufacture of electricity generation which is captively used in its factory for the manufacture of taxable goods. The company is entitled to claim tax credit in respect thereof. The rate of tax credit available to the company will not be even governed by the provisions of Sub-section (4) as the goods are not covered under this Sub-section. The company will be entitled to the tax credit at full rate as prescribed under the law/Rules. The order of the Excise and taxation Commissioner holding that the Appellant-company is not entitled to the input-tax credit under clause (i) of Sub-section (5) of Section 13 of the Act, cannot be sustained and is set aside.

4. We have heard learned counsel for the parties.

5. It will be appropriate to reproduce the statutory provisions dealing with the matter, i.e., Section 13(5) of the Act, which reads as under:

(5) A taxable person under this section, shall not qualify for input-tax credit in respect of the tax paid on purchase of,

(b) Petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of selling such products.

(c) to (h) . . .

(i) Goods used in generation, distribution and transmission of electrical energy unless such generation, distribution and transmission of electrical energy is for captive consumption, in which case, it would be allowed subject to the provisions of Sub-section (4) of this Section.

6. A perusal of the above Section clearly shows that diesel is an item on which input-tax credit is not available unless as provided under clause (b). In view of such express provision, resort could not be had to clause (i). It is settled principle of law that an express and special provision excludes a general provision. *Generalia specialibus non derogant* is an accepted principle with certain exceptions. In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, it was observed:

9...The Rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In *Pretty v. Solly* (1859) 53 ER 1032 quoted in *Craies on Statute Law* at page 206, Sixth Edition Romilly, M.R., mentioned the Rule thus:

The Rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

The Rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: *De Winton v. Brecon* (1858) 28 LJ Ch 598, *Churchill v. Crease* (1828) 5 Bing 177, *United States v. Chase* (1889) 135 US 255, and *Carroll v. Greenwich Ins. Co.* (1905) 199 U.S. 401.

7. Again in *U.P. State Electricity Board v. Hari Shankar Jain* (1978) 4 SCC 16, it was observed:

9. The reason for the Rule that a general provision should yield to a specific provision is this: In passing a Special Act, Parliament devotes its entire consideration to a particular subject. When a General Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament. Vide *London and Blackwall Railway v. Limehouse District Board of Works* (1856) 26 LJ Ch 164 69 ER 1048 and *Thorpe v. Adams* (1871) LR 6 CP 125. In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, , this court observed (at page 1174):

The Rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions, one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

8. In view of express provision in clause (b), we are unable to accept the view taken by the Tribunal that clause (i) will apply. The questions are, thus, answered in favour of the Revenue and against the Assessee.

The petition is disposed of.