(2015) 03 P&H CK 0270

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 11 of 2012 (O and M)

United Spirits Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 83 VST 514

Hon'ble Judges : S.J. Vazifdar, Acting C.J.;Gurmeet Singh Sandhawalia, J.

Bench : Division Bench

Advocate : Sandeep Goyal, for the Appellant; Mamta Singla Talwar, AAG, Advocates for the Respondent

Judgement

S.J. Vazifdar, Actg. C.J.

1. These appeals are against the order of the Haryana Tax Tribunal rejecting the appellant''s application for review under Section 41 of the Haryana General Sales Tax Act, 1973 (in short ''the Act''). The facts in both the appeals are similar. The appeals are therefore, disposed of by this common order and judgment. For convenience, we will refer to the facts from VATAP No. 11 of 2012.

2. The appeal is admitted on the substantial question of law raised in para No. 3 of the appeal which read thus:--

"(1) Whether the department is justified in levying the tax upon the selling dealer of appellant i.e. M/s. Haryana Organics as well as the appellant for the same transaction?

(2) Whether the Tribunal was justified in coming to a conclusion that the price of goods sold by the appellant/assessee included the tax despite the fact that this finding has never been given by any of the lower authorities nor it was confronted by the assessee during the course of arguments before this Hon''ble Tribunal?

(3) Whether the authorities under the act can levy any tax on the ground of

undue enrichment, even though there is no provision for the same?"

The substantial question of law really is whether the Tribunal was justified in rejecting the appellant''s claim on the ground of unjust enrichment.

3. The appellant manufactures liquor. M/s. Haryana Organics sold ethyl alcohol to the appellant. Ethyl alcohol is taxable under the Act whereas liquor was not taxable at the relevant time namely the assessment year 1998-99.

In respect of the said sales, M/s. Haryana Organics issued certificates including for the assessment years 1998-99 and 1999-2000 certifying that the rate of spirit supplied during the said period was inclusive of sales tax and other government levies as applicable to them. In view thereof, the appellant did not issue ST-15 certificates.

M/s. Haryana Organics issued the said certificate dated 12.03.2001 confirming that it was entitled to exemption under Section 13-B of the Act read with Rule 28-A of the Haryana General Sales Tax Rules, 1975. The application for exemption was, however, rejected. M/s. Haryana Organics challenged the rejection by filing CWP No. 18240 of 1997, was disposed of by a learned Single Judge by an order and judgment dated 22.10.2002 [2003 (132) STC 493 PandH]. The learned Judge held that the respondents therein were not justified in denying the exemptions to the petitioners and remanded the matter to the High Level Screening Committee for fresh determination of the claim of M/s. Haryana Organics in the light of the observations made therein. The respondents'' appeal against the said order was dismissed by an order and judgment of the Division Bench dated 03.03.2009 (2009) 39 VST 616 (P and H).

Thereafter, the respondents, in view of the orders in CWP No. 18240 of 1997, considered the matter afresh and issued the eligibility certificate in favour of M/s. Haryana Organics. The certificates granted sales tax exemption of Rs. 496.82 lacs for a period of 9 years from the date of commercial production namely 31.03.1994 to 30.03.2003. In order words, the exemption was granted in respect of the assessment year 1998-99 and 1999-2000, which are relevant in the above appeals.

4. While the proceedings were pending between M/s. Haryana Organics and the respondents regarding the former''s application for exemption under Section 13-B of the Act read with Rule 28-A:--

"(i) assessment orders had been passed in respect of M/s. Haryana Organics. In view of the exemption having been subsequently granted, M/s. Haryana Organics challenged the demand; and

(ii) an assessment order dated 10.04.2001 was made in respect of the appellant for the assessment years 1998-1999 and 1999-00. The appellant was assessed to purchase tax on the ground that neither the appellant nor M/s. Haryana Organics had in fact paid the same and that M/s. Haryana Organics was not an exempted unit under the said Act. On 23.12.2002, the Tribunal dismissed the appeal against the assessment order."

However, as we mentioned earlier, the learned Single Judge by the order and judgment dated 22.10.2002 had allowed the said writ petition CWP No. 18240 of 1997 filed by M/s. Haryana Organics and directed the respondents to consider the application for exemption afresh.

5. As we mentioned earlier, the Tribunal had by the order dated 23.12.2002, upheld the levy of purchase tax upon the appellant as the appellant was the last purchaser of taxable goods to be used for the purpose of manufacturing non taxable goods. In view of this order, the appellant filed the above review application before the Tribunal. As we also mentioned earlier, thereafter the respondents issued the eligibility certificate in favour of M/s. Haryana Organics for 9 years which included the assessment years 1998-99 and 1999-2000 which are relevant in this appeal.

6. The Tribunal by the impugned order, held that in view of M/s. Haryana Organics subsequently becoming entitled to the exemption, the review application was maintainable. The Tribunal, therefore, admitted the review petition. The Tribunal also came to the conclusion that the appellant was no longer liable to pay the tax. However, the review was rejected on the ground of unjust enrichment. The Tribunal held:--

"9...................So far as purchases of alcohol effected from M/s. Haryana Organics during the year 1998-99 is concerned, by admission of both, the seller and the purchaser, the price of the alcohol charged was inclusive of sales tax applicable at the relevant time, therefore, it would be legally justifiable to presume that as a prudent businessman, the applicant-assessee ought to have factored the element of tax in the price of alcohol (purchased by him) in the price of liquor manufactured and sold by him. Thus from the angle of exemption is eventually granted to M/s. Haryana Organics or not for the relevant period. In this view of the matter, the review is rejected. " 7. The reasoning adopted by the Tribunal is perverse. Looked at either way, there is no question of unjust enrichment. The Tribunal has proceeded on the basis of the appellant''s contention that the purchase price paid by the appellant included the sales tax element and, therefore, inferred that the appellant must have added the element of tax in the price of alcohol sold to the consumers.

8. Assuming that the tax had been paid by the appellant and had been recovered from the consumers, the matter would end there. The appellant would not be burdened with any tax itself. However, the appellant was compelled to deposit the entire purchase tax element with the Assessing Authorities as a condition precedent to the maintainability of its appeal. Far from being unjustly enriched the appellant in this manner is actually out of the pocket to the extent of the amount paid as a condition precedent to the maintainability of the appeal. In the event of the same being refunded, there would be no question of unjust enrichment.

9. Conversely assuming that the appellant had not paid the tax, it would be reasonable to presume on the same line of reasoning adopted by the Tribunal that the appellant had not recovered the amount from the consumers. In any event, the Tribunal has not come to any finding against the appellant to the effect that it actually recovered the amount from the consumers. There would be no justification for us to speculate to this effect in the appellant''s appeal. In that event also, the appellant would be out of pocket to the extent of the amount deposited by it as a condition precedent for the maintainability of its appeal. The amount, therefore, must even in that event be refunded.

10. In the circumstances, both the appeals are allowed. The amount shall be refunded by the respondents within 12 weeks from today.