

(2012) 01 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh**Case No:** CWP No. 6065 of 1995

Sandan Vikas (India) Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Jan. 6, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2013) 59 VST 165**Hon'ble Judges:** M.M. Kumar, J; Ajay Kumar Mittal, J**Bench:** Division Bench**Advocate:** Avneesh Jhingan, for the Appellant; Vinod S. Bhardwaj, Additional Advocate-General, Haryana, for the Respondent

Judgement

Ajay Kumar Mittal, J.

The assessee-petitioner by way of present writ petition under article 226 of the Constitution of India has sought quashing of the order dated February 6, 1995, annexure P6, passed by the Haryana Sales Tax Tribunal, Haryana. Briefly the facts as narrated in the petition may be noticed. The petitioner-company is engaged in the business of manufacturing and sale of air-conditioning system and its components for automobiles being supplied as original equipment to Telco and Maruti Udyog, etc. The Assessing Authority finalized the assessment for the year 1989-90 vide order dated September 16, 1992. It also imposed purchase tax on goods purchased within the State without payment of tax and used in transfers to other States on proportionate basis u/s 6 of the Haryana General Sales Tax Act, 1973 (in short, "the Act"). The additional demand of Rs. 42,765 and Rs. 66,623 created as a result of the assessment order, was discharged by the petitioner. The revisional authority exercising revisional power u/s 40 of the Act took the file to examine the legality and validity of the assessment order. The revisional authority took up the issue that the assessing authority while levying tax on purchases had left out purchase of machinery in the form of lease rent amounting to Rs. 19,17,824. Besides the rebate

of tax worth Rs. 30,556 on corrugated boxes had been erroneously allowed. The revisional authority also held that the petitioner was liable to interest under sections 25(5) of the Act and 9(2) of the Central Sales Tax Act, 1956 (in short, "the Central Act") read with section 25(5) of the Act and penalty. Besides the aforesaid, the revisional authority disallowed claim of sales made to registered dealers for a sum of Rs. 44,015 on the ground that waste cartoon boxes were liable to tax at the first stage within the State of Haryana. An additional demand of Rs. 3,03,382 under the State Act and Rs. 5,248 under the Central Act was created by the revisional authority vide order dated April 23, 1993. The petitioner filed an appeal before the Tribunal. Vide the order impugned herein, levy of tax on lease rent and disallowance of rebate on the corrugated boxes have been upheld while the levy of interest u/s 25(5) of the Act has been quashed. Hence this petition.

2. The learned counsel for the petitioner submitted that the petitioner had filed Civil Writ Petition No. 6691 of 1993 [Sandan Vikas \(India\) Limited Vs. The State of Haryana and Others](#), challenging the validity of section 2(g) and 2(j) read with note 4 of the Act as amended whereby lease money was sought to be taxed as part of turnover and had also challenged the revisional order dated April 23, 1993. According to the learned counsel, the Division Bench of this court on April 4, 2011 following the judgment of the apex court in [20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra](#), had held that note 4 cannot be held to be applicable to transfer of right of use of goods outside the State of Haryana merely because the goods were within the State at the time of use when such goods are not in the State at the time of transaction. The writ petition was allowed and order dated April 23, 1993 to the extent of including in turnover, transaction taking place outside the State of Haryana was quashed. Learned State counsel fairly accepted that the present writ petition is covered by the aforesaid decision. In view of the above, the present writ petition is disposed of in the same terms as in CWP No. 6691 of 1993 [Sandan Vikas \(India\) Limited Vs. The State of Haryana and Others](#), decided on April 4, 2011.