(2014) 03 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: VATAP No. 166 of 2013

Carrier Aircon Limited — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision: March 31, 2014

Acts Referred:

- Haryana Value Added Tax Act, 2003 - Section 36

Citation: (2014) 73 VST 203

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Avneesh Jhingan, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.
This appeal has been preferred by the asses-see u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Act") against the order dated August 19, 2013 passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:

"(i) Whether, in the facts and circumstances of the case, the declaration forms can be produced during the appeal proceedings?

(ii) Whether, in the facts and circumstances of the case, the Tribunal was justified in not allowing production of declaration forms in appeal proceedings inspite of sufficient explanation being there for the same not being produced before the Assessing Authority?

(iii) Whether in the facts and circumstances of the case, orders annexure A7 is sustainable in law and is not perverse as the same is contrary to the facts on record?"

Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed quarterly returns as also the annual returns for the assessment year 2008-09. In the returns filed, the dealer claimed sales made against declaration forms I and C The assessing authority finalized the assessment vide order dated March 7, 2012 (annexure A1) and created a demand of Rs. 54,02,197 because of short production of declaration forms I and C. The time was also extended up to May 31, 2012 for submission of the declaration forms. The dealer produced the declaration forms during the time granted by the assessing authority. Accordingly, the Assessing Authority vide order dated June 11, 2012 (annexure A2) rectified the assessment order and reduced the demand to Rs. 42,63,014. Feeling aggrieved, the assessee filed an appeal dated May 16, 2012 (annexure A3) before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated October 4, 2012 (annexure A4) remanded the matter to the Assessing Authority for entertaining the declaration forms I and C. In pursuance of the order dated October 4, 2012, the dealer appeared before the Assessing Authority and produced all the declaration forms. The Assessing Authority vide order dated January 10, 2013 (annexure A5) after considering the declaration forms produced by the dealer, reduced the demand to Rs. 17,45,307. Thereafter, since the appellant had not received all the declaration forms, an appeal (annexure A6) was filed before the Tribunal. The Tribunal vide order dated August 19, 2013 (annexure A7) dismissed the appeal. Hence, the present appeal.
2. We have heard learned counsel for the parties and perused the record.

3. The primary question that arises in this appeal is whether the dealer can file tax invoices and forms VAT C-4 claiming benefit of input-tax credit at appellate stage and in that eventuality the liability of the dealer is to be re-determined.

4. The learned counsel for the appellant submitted that due to non-receipt of the invoices and forms VAT C-4 from the seller, the same could not be furnished earlier. It was urged that the appellant is in possession of these forms now and the assessee be permitted to submit the same before the Assessing Authority.

5. The learned counsel for the parties are ad idem that the issue raised in this appeal is no longer res integra and stands concluded by the decisions of this court in C.W.P. No. 13789 of 2011 titled as Vijay Cottex Ltd. Vs. State of Haryana, and CWP No. 15553 of 2011 titled as Jai Hanuman Stone Crushing Mills Vs. State of Haryana, both decided on December 19, 2013, wherein it has been held that the dealer is, entitled to produce form VAT C4 and tax invoices before the Assessing Authority who shall verify the same and pass a fresh order, in accordance with law. In view of the above, the present appeal is disposed of in the same terms as in Vijay Cottex Ltd. Vs. State of Haryana, and Jai Hanuman Stone Crushing Mills Vs. State of Haryana,