(2014) 07 P&H CK 0861

High Court Of Punjab And Haryana At Chandigarh

Case No: V.A.T. Appeal No. 131 of 2012 (OandM)

Modern Dairies Limited	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: July 10, 2014

Acts Referred:

- Central Sales Tax Act, 1956 - Section 9(2)
- Haryana Value Added Tax Act, 2003 - Section 35, 36, 36(1)

Citation: (2014) 76 VST 479

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

Bench: Division Bench

Advocate: Sandeep Goyal, 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-appellant under section 9(2) of the Central Sales Tax Act, 1956 (in short, "the CST Act") read with section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated March 16, 2010, annexure A5, passed by the Haryana Tax Tribunal at Chandigarh (in short, "the Tribunal") in STA No. 393 of 2009-10. On January 15, 2014, the appeal was admitted to consider the following substantial questions of law:

"(i) Whether, in the facts and circumstances of the case, the honourable Tribunal was justified in holding that the sales return are allowed to be deducted only in the year to which it relates and not in the period during which it has been returned back ignoring rule 22(4) read with section 9(2) of the CST Act, 1956?

(ii) Whether the Tribunal was justified in upholding tax at the maximum rate ignoring the fact that for the entire turnover, the C forms have already been furnished?"

A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a dealer duly registered under the HVAT Act. It is engaged in the business of sale and purchase of milk and milk products. The company is also engaged in the sale of milk to M/s. Mother Dairy Foods Processing Limited, Delhi, who supplies the raw milk to the appellant and after pasteurizing and other processing, the same is supplied to it. The appellant filed its return for the year 2005-06 at gross turnover of Rs. 87,41,26,563. It had paid sales tax amounting to Rs. 66,07,318 and Central sales tax amounting to Rs. 2,06,86,913. Return was taken up for scrutiny. While framing the assessment, the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Karnal rejected sales return amounting to Rs. 31,18,996 as the same belonged to the year preceding to the year in question. The Assessing Authority framed assessment vide order dated January 30, 2009, annexure A1 raising a demand of Rs. 3,01,197 under the HVAT Act and Rs. 14,75,154 including interest amounting to Rs. 5,85,868 under the CST Act. Subsequently, the assessing authority rectified the order on submission of C forms wherein the demand was reduced to Rs. 11,60,344 (including interest amounting to Rs. 5,85,868). Feeling aggrieved, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals) (JETC (A)). Vide order dated July 1, 2009, annexure A3, the JETC (A) rejected the appeal and upheld the demand. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated March 16, 2010, annexure A5, the Tribunal partly accepted the appeal to the extent that a show-cause notice be given to the assessee after which the issue should be decided and on the issue of conversion charges, disallowance of ITC on poly packs used in job work, levy of interest and the rate of tax applicable on the sale of vehicles, the case was remanded back to the assessing authority. However, the order of JETC (A) disallowing the claim of the returned goods was upheld. Thereafter, the assessee appeared before the assessing authority in remand proceedings. The assessing authority dropped the additions on the ground on which the Tribunal had remanded and calculated an excess of Rs. 1,92,928. Aggrieved by the disallowance of claim of the returned goods, the assessee filed reference and review applications under sections 35 and 36 read with section 9(2) of the CST Act before the Tribunal. The review application was dismissed by the Tribunal vide order dated July 5, 2011 by observing the same as not maintainable. Hence the present appeal by the assessee.

2. The learned counsel for the appellant submitted that under rule 22(4) of the Haryana Value Added Tax Rules, 2003 (in short, "the Rules"), no claim of return of goods sold to any person shall be admissible if the same is not made in the return for the quarter in which the goods have been returned. It was urged that the assessing authority as well as the JETC (A) and the Tribunal had erred in declining the claim of the assessee in the current year.

3. On the other hand, learned counsel for the respondent supported the orders passed by the Tribunal.

4. It would be expedient to reproduce rule 22(4) of the Rules, which reads thus:

"22. Return of goods.--(1) to (3) . . .

(4) No claim of return of goods sold to any person shall be admissible if the claim is not made in the return for the quarter in which the goods have been returned."

5. A plain reading of rule 22(4) of the Rules shows that a dealer is entitled to make claim of return of goods sold to any person in the return for the quarter in which the goods had been returned and the same shall be admissible in that quarter only. To put it differently, the assessee is not entitled to claim the benefit of return of goods sold to any person in any other quarter except the quarter in which the goods have been returned. In our opinion, no other meaning can be assigned to the said rule.

6. In view of the above, since the authorities have failed to consider the issue with regard to rule 22(4) of the rules relating to question No. (i), it would be appropriate that the matter is remanded to the assessing officer to examine the same and re-decide it in accordance with law. It was submitted by the learned counsel for the parties that in view of the answer to question No. (i), question No. (ii) is rendered academic. Disposed of accordingly.