IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GSTR No. 5 of 2010

Date of Decision: 22.12.2015

M/s Skol Breweries Ltd. (previously known as Haryana Breweries Ltd.), Murthal, Panipat

....Petitioner.

Versus

The State of Haryana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Sandeep Goyal, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of GSTR Nos. 4 to 11 of 2010 as according to the learned counsel for the parties, all the references are interconnected and common questions of law and facts are involved therein. For brevity, the relevant facts are being extracted from GSTR No. 5 of 2010.

2. In GSTR No.5 of 2010, the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") vide order dated 4.2.2010 has referred for opinion of this Court following questions of law under Section 42 of the Haryana General Sales Tax Act, 1973 (in short

“the Act”) arising out of its order dated 22.1.2002 passed in STA Nos. 659, 660, 611, 319 to 321 and 501 of 2000-01:-

(i) Whether the Tribunal is justified to hold that beer (IMFL) is an item covered by Entry 24A of Schedule 'B' of Haryana General Sales Tax Act, 1973?

(ii) Whether the Tribunal is justified to uphold the action of the Revisional Authority not to allow set off under Section 15A of the Haryana General Sales Tax Act on the ground that the item is covered by Entry 24A of Schedule 'B' and raising the demand against the dealer?

3. A few facts necessary for adjudication of the references as narrated therein may be noticed. The petitioner is a dealer registered under the Act and is engaged in the business of manufacturing of beer. The Assessing Authority vide order dated 15.10.1997 framed the assessment for the year 1993-94. Vide order dated 21.2.2000, the assessment order was revised by the Revisional Authority and levied purchase tax under Section 6 of the Act partially disallowing claim under Section 15A of the Act. Still dissatisfied, the petitioner filed an appeal before the Tribunal. The Tribunal vide order dated 24.4.2002 while relying upon its earlier decision dated 22.1.2002 in **STA No. 70 of 1993-94 (M/s Thomas & Katyal Pvt. Ltd. Murthal v. State of Haryana** dismissed the appeal along with other connected appeals. Hence, the references.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner(s) submitted that the

Tribunal has decided the issue by relying upon its order dated 22.1.2002 passed in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra)** whereas the case of the petitioner(s) is totally different. It was urged that in these circumstances, the order of the learned Tribunal was unsustainable. The said contentions of the learned counsel were noted by this Court vide order dated November 18, 2015.

6. Learned State counsel was not able to controvert that the issue in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra)** was different from the issue involved herein. However, it was urged that on merits the controversy is to be decided against the petitioner(s).

7. Since the Tribunal has decided the appeals only on the basis of the decision in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra),** the matter requires to be remanded to the Tribunal to decide afresh in accordance with law.

8. In view of the above, the matter is remanded to the Tribunal to decide the same afresh after hearing the parties and by passing a speaking order in accordance with law.

9. References stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

December 22, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**