IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

**1) VAT Appeal No.86 of 2013 (O&M)**
**Date of Decision: February 13, 2015**

State of Haryana through Deputy Excise and Taxation Commissioner, (ST)-cum-Assessing Authority, Hisar

…..Appellant

Versus

M/s Ravindra Tubes Ltd. and others …..Respondents

**2) VAT Appeal No.87 of 2013 (O&M)**

State of Haryana through Deputy Excise and Taxation Commissioner, (ST)-cum-Assessing Authority, Hisar

…..Appellant

Versus

M/s Jindal Industries Limited and another …..Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA**
**HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Ms. Mamta Singal, AAG, Haryana
for the appellant.

Mr. Sandeep Goyal, Advocate
for the respondents.

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**Rajive Bhalla, J. (Oral)**

By way of this order, we shall decide VAT Appeal Nos.86 and 87 of 2013, as the impugned orders in both appeals are similar.

The State of Haryana is before us challenging order dated 17.11.2011, passed by the Haryana Tax Tribunal, dismissing an application for review.

Counsel for the State of Haryana submits that even though orders passed by the Excise and Taxation Commissioner-cum-Revisional Authority, Hisar, were set aside and assessment orders passed by the Deputy Excise and Taxation Commissioner-cum-Assessment Authority, were restored by the Tribunal, the Act does not prohibit the Deputy Excise and Taxation Commissioner-cum-Assessment Authority, who represents the State, from filing a petition for review of the order passed by the Tribunal. The majority opinion recorded by the Tribunal that as the order passed by the Deputy Excise and Taxation Commissioner had been restored he had no right to file an application for review, is incorrect as the Tribunal has not considered the words and expressions used in Section 41(1) of the Act. Counsel for the State of Haryana further submits that the minority opinion, affirming the right of the Deputy Excise and Taxation Commissioner, to file an application for review, is the correct opinion in law and may, therefore, be affirmed.

Counsel for the respondents submits that the Deputy Excise and Taxation Commissioner, Hisar, concluded assessment on 30.08.1995. The revisional authority set aside the assessment order and remitted the matter to the assessing authority for re-assessment. The respondents challenged the order passed by the revisional authority before the Tribunal. The Tribunal, set aside the order passed by the revisional authority and restored the order passed by the assessing authority, i.e. Deputy Excise and Taxation Commissioner, Hisar. The Deputy Excise and Taxation Commissioner filed an application for review. The Tribunal has rightly held that in this situation, as the Deputy Excise and Taxation Commissioner is not a person aggrieved, he could not maintain an application for review.

We have heard counsel for the parties and perused the paper book.

The short question that arises for consideration is whether the Deputy Excise and Taxation Commissioner could maintain an application for review, under Section 41(1) of the Act, against the order passed by the Tribunal, restoring his order. Admittedly, the order passed by the Deputy Excise and Taxation Commissioner, was restored by the Tribunal. The Deputy Excise and Taxation Commissioner, filed an application for review of this order. The Tribunal has dismissed the application by holding that as order passed by the Deputy Excise and Taxation Commissioner has been restored, he is not a person aggrieved and, therefore, cannot maintain an application for review.

Section 41(1) of the Act empowers the "Assessing Authority" or "any person aggrieved" to file an application for review. A situation may arise, as has arisen in the present case, where an order passed by an assessing authority (the Deputy Excise and Taxation Commissioner), is restored by the Tribunal. In such a situation, the assessing authority cannot possibly file an application for review against an order restoring its order whether as the assessing authority or the person aggrieved. The revenue should have empowered an officer other than the assessing authority to file an application for review.

We, therefore, find no reason to differ from the majoirty opinion recorded by the Tribunal and while dismissing the appeal, grant liberty to the State of Haryana to either file an appeal against the order passed by the Tribunal, remanding the matter to the assessing authority or to file a fresh application for review by any person considering himself to be aggrieved.

**(Rajive Bhalla)**
**Judge**

**(Amol Rattan Singh)**
**Judge**

**February 13, 2015**
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