IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP No.170 of 2014
Date of decision:25.05.2015

M/s Rakhi Agencies Ltd.

....Appellant

Versus

State of Haryana & another

......Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sandeep Goyal, Advocate, for the appellant.

Ms.Mamta Singla Talwar, AAG, Haryana, for the respondents.

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S.J.Vazifdar, Acting Chief Justice (Oral):

1. This is an appeal against the order of the Haryana Value Added Tax Appellate Tribunal, Haryana (for short, the 'Tribunal') dated 28.05.2013 (Annexure A-11), dismissing the appellant's review petition, erroneously, as it had earlier been allowed by the Tribunal.

2. The appeal is admitted on the following substantial question of law:

> "Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in dismissing the Review Application of the appellant even though vide its order dated 9.7.2012 the Review Application had already been allowed and the appeal was ordered to be heard on merits?"

3. The Assessing Authority, vide an order dated 03.10.2003 (Annexure A-6), imposed a tax and penalty under Section 9(2A) of the Central Sales Tax Act, 1956, read with Section 31(8) of the Haryana Value Added Tax, 2003. The First Appellate Authority dismissed the appeal. The appellant filed an appeal before the Tribunal, which was dismissed by an order dated 06.11.2008 (Annexure A-9). Against this order, the appellant filed the said application for

review. The Tribunal, in its order dated 09.07.2012, noted that its observations in paragraph 6 of the order dated 06.11.2008 were not strictly in accordance with law; that the matter struck at the very root of the jurisdiction of the Officer who imposed the penalty and that it would, therefore, be in the interest of justice to allow the review petition. The Tribunal, accordingly, fixed the appeal for hearing on the issue discussed in the order.

4. In the circumstances, the appeal had to be heard on merits, *de novo.* For some reason, the majority of two Members of the Tribunal failed to notice the order dated 09.07.2012 (Annexure A-10). The majority order dated 28.05.2013 observed that the appellant had filed a review petition against the said order of the Tribunal dated 06.11.2008 and proceeded to dispose of the review petition, yet again. This they could obviously not have done as the review petition had already been allowed vide order dated 09.07.2012 which has attained finality. The order dated 09.07.2012 has, admittedly, not been challenged. It is obvious that the majority treated the matter as a review petition, for the order observed that there was no mistake apparent on the face of the order dated 06.11.2008, sought to be reviewed and that nothing of relevance escaped the notice of the Tribunal that passed the order dated 06.11.2008. The majority also observed that the appellant had not raised the issue of jurisdiction before the checking officer.

However, as we noted earlier, the Tribunal, vide the order dated 09.07.2012, had granted the review and had, in fact, observed that the issue was at the very root of the matter. It is obvious that the majority, passed the order without noticing the order dated 09.07.2012. The minority judgment of the Chairman dated 28.05.2013 noticed the order dated 09.07.2012. The Chairman rightly observed that once the review petition had been entertained on the point of jurisdiction, which went to the root of the case, the same had to be decided.

Obviously, the Chairman also had, inadvertently, stated that the appeal is allowed. The appeal is, now, to be considered by the Tribunal.

5. The appeal is, accordingly, allowed. The question of law is answered in favour of the appellant. The impugned order and judgment dated 28.05.2013 (Annexure A-11) is quashed and set aside. The matter is remanded to the Tribunal and the petition shall be heard in accordance with the order dated 09.07.2012, passed by the Tribunal.

(S.J.Vazifdar)
Acting Chief Justice

25.05.2015
sailesh

(G.S.Sandhawalia)
Judge