IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Appeal No. 76 of 2014
Date of decision: 17.8.2015

M/s Santosh Pargal & Co.

……Appellant.

The State of Haryana

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN

1. Whether Reporters of 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?

Present: Mr. Avneesh Jhingan, Advocate for the appellant.
Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,J.

1. This order shall dispose of VAT Appeal Nos. 76 and 77 of 2014 as learned counsel for the parties are agreed that the issue involved in both the appeals is identical. However, the facts are being extracted from VAT Appeal No.76 of 2014.

2. VAT Appeal No.76 of 2014 has been preferred by the assessee-appellant under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 28.2.2013, Annexure A.4

passed by the Haryana Tax Tribunal at Chandigarh (in short, “the Tribunal”) in STA No.892 of 2010-11 dated 28.2.2013, claiming following substantial questions of law:-

i) Whether in the facts and circumstances of the case, the disposal of appeal by the Tribunal in terms of its earlier order in which the issue involved was distinct is sustainable in law?

ii) Whether in the facts and circumstances of the case, the present appeal could have been disposed of in lieu of the decision of STA 180 of 2005-06 inspite of the fact that no additional excise duty is leviable in the present case?

iii) Whether in the facts and circumstances of the case, the chemicals, detergents, bleaches etc. can be taxed when there is no passing of such property in job work?

iv) Whether in the facts and circumstances of the case, on entire value of the dyes and chemicals, tax can be levied, when part of them is transferred to the customers alongwith the leather?

v) Whether in the facts and circumstances of the case, the charging of interest in the case in hand is legal especially when the position regarding taxability itself is fluid?

3. A few facts relevant for the decision of the controversy involved as narrated in VAT Appeal No.76 of 2014 may be noticed. The appellant is a partnership firm. It is carrying out business of tannery at Murthal, District Sonepat. i.e. processing of wet blue leather sheep/goat skin to finished leather used for leather garments, goods and shoes for export. It is mainly doing job work in which wet blue leather is supplied by the exporter for processing into finished leather. It uses chemicals, fat liquors, dyes, syntans, sodium bicarbonate etc. for cleaning, washing and drying the leather. It is registered under the HVAT Act and Central Sales Tax Act, 1956

(in short, "the CST Act"). The Assessing authority while framing assessment for the assessment year 2006-07 levied tax and charged interest on the material consumed in the job work and additional demand of ₹ 1,72,332/- was created under the HVAT Act and ₹ 7,81,665/- under the CST Act. Aggrieved by the order, the appeals were filed before the first appellate authority by the assessees in both the cases. Vide order dated 4.1.2011, Annexure A.2, the appeals were dismissed. The assessees went in appeals before the Tribunal. Vide order dated 28.2.2013, Annexure A.4, the Tribunal disposed of the appeals in terms of its earlier decision dated 10.9.2012 in STA No.180 of 2005-06 (***M/s Northern India Textile Processors Association, Faridabad vs. State of Haryana).*** In that case, challenge was made to clarification dated 14.1.2005 issued by the Government of Haryana. In the said case, gray cloth was washed, bleached, dyed and printed on job work basis. Since additional excise duty was payable on textile and cloth remained cloth earlier and after the job work, no tax could be charged because of levy of additional excise duty. The Government rejected the claim of the dealers. The Tribunal upheld the clarification and taxability of the material consumed in the job work inspite of the fact that additional excise duty was leviable on textile. In the present case, according to the appellant, it is processing leather and not textile. No additional excise duty was thus leviable. The issue involved herein was not the same as in ***M/s Northern India Textile Processors Association's*** case (supra). Hence the instant appeals by the assessee-appellants.

4. We have heard learned counsel for the parties.

5. Learned counsel for the assessee-appellants submitted that the

Tribunal has decided the issue on the basis of its decision in ***M/s Northern India Textiles Processors Association's*** case (supra). A copy of the order passed in the said case has been produced which shows that the issue involved in the said case was with regard to textile industry and whether VAT could be levied on cloth which was subjected to additional excise duty. The Tribunal held that the tax could be levied on deemed sale of dyes and chemicals. In the present case, no additional excise duty was leviable. The issue was how much chemical was transferred in processing of hides and skins as no chemical gets attached to the leather. The appeals of textile industry with regard to quantum of tax to be levied on dyes and chemicals are pending before the Tribunal. The present appeals have been wrongly disposed of by the Tribunal following its earlier decision in ***M/s Northern India Textiles Processors Association's*** case (supra).

6. After hearing learned counsel for the parties, we find that learned counsel for the State was unable to controvert that the issue involved in the two cases was not different. Consequently, the substantial questions of law are answered accordingly. The impugned order dated 28.2.2013, Annexure A.4 in both the appeals passed by the Tribunal is set aside and the matter is remanded to the Tribunal to decide it afresh after hearing learned counsel for the parties in accordance with law. The appeals stand disposed of.

(Ajay Kumar Mittal)
Judge

August 17, 2015 **(Shekhar Dhawan)**
'gs' **Judge**