IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.104 of 2012 (O&M)
Date of decision:February 15, 2016

State of Haryana through the Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority, Karnal

vs.

……Appellant

M/s Karnal Agricultural Industries Limited, GT Road, Karnal and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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: Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Avneesh Jhingan, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 11.4.2012, Annexure A.3 passed by the Haryana Tax Tribunal, Chandigarh (in short, "the Tribunal") for the assessment year 2004-05. It was admitted on 14.2.2013 to consider the following question of law:-

"Whether the input tax credit can be allowed on furnace oil (Petroleum Product) the primary use of which has fuel only?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is working as Deputy Excise and Taxation Commissioner (ST) cum-Revisional Authority, Karnal. The respondent company - M/s Karnal Agricultural Industries Limited, Karnal is engaged in the manufacturing of disc which is a part of Cultivator Harrow, an agricultural implement used for cultivation of land for agricultural purpose. The raw material for manufacturing of disc is billet (small bar of metal for further processing) or old railway line i.e. iron and steel which is first cut into size, heated in a furnace at a high temperature, rolled to make a plate and then cut in the shape of a disc. Finally, the product is painted or powder-coated for marketing and longevity. The respondent company purchased petroleum products i.e. furnace oil worth ₹ 2,91,17,607/- for use in furnace for heating involved in processing of metal for manufacturing of discs and claimed input tax credit on it in its returns which was allowed by the Assessing authority vide order dated 24.2.2006, Annexure A.1. The Deputy Excise and Taxation Commissioner (ST)-cum-revisional authority (DETC) in exercise of the powers of revision provided under section 34 of the HVAT Act vide order dated 21.5.2008, Annexure A.2 revised the order of the assessing authority after examining the reply filed by the dealer. The input tax claim on the purchases of ₹ 2,91,17,607/- of furnace oil was disallowed which was used as fuel by the respondent and as such a

demand of ₹ 7,24,306/- was created. The respondent company preferred an appeal against the order of the revisional authority before the Tribunal. Vide order dated 11.4.2012, Annexure A.3, the Tribunal accepted the appeal and set aside the order of the revisional authority. According to the appellant, the revisional authority revised the assessment order of the assessing authority for the assessment year 2005-06 and the Tribunal vide order dated 11.4.2012, Annexure A.4 remanded the case to the revisional authority. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The issue that arises for consideration in this appeal is whether the assessee had been using the petroleum based products as a fuel or not.

5. Entry I of Schedule E of Section 8 of the HVAT Act reads thus:-

Sr. No.	***Description of goods***	***Circumstances in which input tax shall be nil***
1.	Petroleum product and natural gases	i) when is used as a fuel ii) when exported out of State.

A perusal of the above entry shows that the petroleum product and natural gas when used as fuel or when the same are exported out of State, no input tax credit will be available to the dealer. It has been categorically recorded by the Tribunal that there is no mention in the assessment order of any petroleum products purchased inside the State and used in manufacture whether as fuel or otherwise. The record however shows that the petroleum products had been purchased inside the State at concessional rate of tax. There is no finding to the effect that the furnace oil was used as fuel by the company. In the absence of any clear finding recorded by the revisional authority that the furnace oil was used as fuel by the assessee, the revisional order regarding disallowance of input tax credit on purchase of furnace oil could not be legally sustained. For the assessment year 2005-06, under similar circumstances, the matter had been remanded to the revisional authority by the Tribunal to consider the contention of the assessee that it had used furnace oil for greasing and coating of discs and not as fuel by producing its books of account and other relevant documents.

6. In view of the above, we find that the matter requires to be remanded to the revisional authority i.e. DETC to pass fresh order after examining the evidence on record in accordance with law. Consequently, the impugned order passed by the Tribunal dated 11.4.2012, Annexure A.3 is set aside. The appeal stands disposed of. Needless to say that nothing observed hereinbefore shall be an expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

February 15, 2016 **(Raj Rahul Garg)**
'gs' **Judge**