

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

VATAP No. 111 of 2012 (O&M)

Date of decision : 09.12.2016

M/s Cherryhill Interiors Limited

.. Appellant

versus

The State of Haryana

.. Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

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

Rajesh Bindal, J.

1. The assessee is in appeal against the order dated 9.8.2011 passed by the Value Added Tax Tribunal, Haryana, Chandigarh. The substantial questions of law as pressed at the time of final hearing are as under:-

- i) Whether in the facts and circumstances of the case on combined reading of Section 14(6), Section 24 and Rule 33, can interest be charged from the contractor for late deposit of TDS by contractee ?
- ii) Whether in the facts and circumstances of the case the liability of the contractor to deposit tax due according to the returns can be extended to mean that he is liable for timely deposit of TDS deducted by the contractee ?

2. Learned counsel for the appellant submitted that the appellant

is a contractor executing works of various contractees. As per the provisions of the Haryana Value Added Tax Act, 2003 (for short, 'the Act'), the contractee is liable to deduct tax from the payment to be made to the contractors and deposit the same with the department. In terms of the certificate issued to the contractor by the contractees, the credit of the amount reflected therein is granted to the contractor out of the tax payable by him. The assessment of the appellant for the year 2006-07 was framed by the Assessing Authority vide order dated 23.3.2010. The works contract tax was determined at ₹ 95,02,695/-. The payments to the tune of ₹ 94,05,576/- were verified, the credit for which was given. In addition, interest was levied under Section 14(6) of the Act. Aggrieved against the order of assessment levying interest, the appellant preferred appeal before the Joint Excise & Taxation Commissioner (Appeals), Faridabad, who vide order dated 6.1.2011, dismissed the same. The order was upheld by the Tribunal vide order dated 9.8.2011. The matter was remanded back only for the purpose of recomputation of the interest liability, as the Tribunal opined that the interest is chargeable on quarterly basis and not on monthly basis.

3. It is the aforesaid order, which is under challenge in the present appeal.

4. Learned counsel for the appellant argued that Section 24 of the Act cast a liability on a contractee to deduct tax at the rate specified from any payment made to a contractor and deposit the same with the department. The contractee is liable to file periodic returns and deposit the amount of tax so deducted with the department. For any amount of tax deducted, a certificate is issued to the payee on whose account the deduction was made. On the strength of the certificate, the payee is entitled to get the credit from

the tax payable by him. If a contractee fails to deduct whole or part of the tax or fails to deposit with the department whole or part of the tax, at any time within five years from the close of the year in which default occurred, penalty equal to the amount of tax can be levied. Rule 16 of the Haryana Value Added Tax Rules, 2003 (for short, 'the Rules'), provides for the period when the returns are to be filed by the contractees. Rule 33 of the Rules provides for procedure for deduction of tax at source and deposit with the department. The tax is to be deducted monthly and to be deposited with the department in next 15 days after the close of the month. Original copy of the challan is to be affixed with the return to be filed by the contractee and 5th copy is to be furnished to the contractor as a certificate of tax deduction and payment, who is to annex the same with his return to claim the credit thereof.

5. Section 14 of the Act provides for filing of return and payment of tax. On failure to make payment of tax in accordance with the provisions of the Act and the Rules, there is liability to pay interest under Section 14(6) of the Act.

6. As per Rule 49(3) of the Rules, a contractor opting to pay tax on lump sum basis is liable to make payment of tax calculated @ 4% of the payments received or receivable by him during the quarter for execution of a contract. The payment of lump sum so calculated is to be made within thirty days following the close of the quarter after reducing the amount paid on his behalf by any contractee under Section 24 of the Act for that quarter. The receipt for proof of the amount paid by the contractee is to be attached with the returns to be furnished quarterly.

7. While referring to the aforesaid provisions of the Act and the

Rules framed thereunder, the submission is that the provisions for deduction of tax at source were added in the statutes only to safeguard the interest of the revenue. Duty was cast on a contractee to deduct the tax for any work got executed by him for better compliance of the provisions of the Act. Once the contractee has been made liable to deduct tax and deposit the same with the department for any default on his part, action is to be taken against him and not against the contractor. While deducting the tax, a contractee is working as an agent of the government. The contractor has no means to ensure that a contractee is complying with the provisions of the Act. He is only to furnish the certificate to the contractor showing deposit of tax in the Treasury. A contractee can be penalised for default in deduction or deposit of tax. The interest of the department is well protected as action can be and should be taken against him. Interest is compensatory. Once the contractee can be penalised to the extent of 100% of the amount in dispute, that takes care of the amount of interest which could possibly be charged by the department on account of delayed payment of tax. In the case in hand, the appellant had filed returns, produced the certificate issued by the contractee, default was noticed only at the time of assessment. Had it been pointed out at the time of filing of return by the appellant, the matter could be sorted out there and then. There was delay in deposit of tax by the contractee. He utilised the money and hence, he should be liable to pay the interest.

8. Learned counsel for the appellant further submitted that interest can be charged from the contractee under Section 14 (2) of the Act.

9. Referring to a judgment of this Court in M/s Gheru Lal Bal Chand vs The State of Haryana and another (2011) 40 PHT 145, it was submitted that the contractee is working as an agent of the government, so

action should be taken against him.

10. Learned counsel for the appellant further contended that even though at the time when the assessment of the appellant was framed and it came to the notice of the department that there was delay in deposit of tax by the contractee and the period of limitation was still available, but no action was taken against the contractee.

11. On the other hand, learned counsel for the State submitted that a contractor is liable to be registered under the Act, whereas a contractee is not. Concept of levy of tax and penalty are different. Special provisions providing for TDS under Section 24 of the Act talk about levy of penalty. Only this action can be taken against the contractee. Against the contractor, the action can be taken under Section 14(6) of the Act. In case a contractee is a registered dealer then only the provisions of the Section 14(6) of the Act will apply. Interest is to be charged and the contractee is liable to pay the same. There is liability on the appellant to file returns and deposit tax. He is entitled to claim credit of the amount of tax deducted/ paid on his behalf by a contractee. Balance amount is to be paid by him along with the returns. The payment is to be made every quarter within 30 days from the close of quarter. As the liability to pay tax on the transaction is of the contractor, he is liable to pay tax. In case of default, he is liable for payment of interest and penalty. The collection of tax from a contractee is merely an advance payment on behalf of the contractor. The default in the case in hand is not of few days, rather of years in some transactions, hence, the appellant cannot escape from liability to pay interest.

12. Learned counsel for the State further submitted that at present she has no information about any action taken against the contractee.

13. Heard learned counsel for the parties and perused the paper book.

14. The relevant provisions of the Act and the Rules are reproduced hereunder:-

Section 14 of the Act

“Submission of returns and payment of Tax

14. (1) Tax payable under this Act shall be paid in the manner and at such intervals as hereinafter provided.

(2) The following dealers or class or classes of dealers, whether or not liable to pay tax, namely: -

- (a) such class or classes of dealers as may be prescribed;
- (b) such dealer as may be required so to do by the assessing authority by notice in the prescribed form served in the prescribed manner,
- (c) a dealer who has applied for the grant of registration certificate but no final decision on his application has been taken; and
- (d) every registered dealer, shall furnish such returns including for statistical purposes at such intervals, verified by such persons, by such dates and to such authority, as may be prescribed and different returns may be prescribed for different class or classes of dealers, and if the tax due according to such returns is more than the tax paid under sub-section (3) or sub-section (4), as the case may be, he shall, in the manner prescribed, pay the balance with interest at the rate specified in sub-section (6) before furnishing the returns and attach therewith the proof thereof.

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(6) If any dealer fails to make payment of tax as required by sub-sections (3), (4) and (5), he shall be liable to pay in addition to the tax payable by him, simple interest at one-and-a-half per cent per month if the payment is made within

ninety days from the last date specified for the payment of tax, but if the default continues thereafter, he shall be liable to pay simple interest at three per cent per month for the whole of the period from the last date specified for the payment of tax to the date he makes the payment.

Section 24 of the Act

Special provisions relating to deduction of tax at source in certain cases

24. (1) The State Government may, having regard to the effective recovery of tax, require in respect of contractors or any other class or classes of dealers that any person making payment of any valuable consideration to them for the execution of a works contract in the State involving transfer of property in goods, whether as goods or in some other form or for sale of goods in the State, as the case may be, shall, at the time of making payment, whether by cash, adjustment, credit to the account, recovery of dues or in any other manner, deduct tax in advance therefrom which shall be calculated by multiplying the amount paid in any manner with such rate not exceeding ten per cent, as the State Government may, by notification in the Official Gazette, specify and different rates may be specified for different works contracts or class or classes of dealers, and that such person shall keep record, of the payments made and, of the tax deducted in advance therefrom, for a period of five years from the close of the year when the payments were made and shall produce such record before the prescribed authority when so required for carrying out the purposes of this Act.

(2) The provisions of sub-section (1) shall not apply where the amount or the aggregate of the amounts paid or likely to be paid during a year by any person to a dealer does not or is not likely to exceed one lakh rupees or such other amount as may be prescribed.

(3) Every person who is required to deduct tax in advance

under sub-section (1) shall furnish such returns at such intervals by such dates in such manner to such authority as may be prescribed and shall pay the tax deducted according to such returns to the State Government in such manner as may be prescribed.

(4) Every person referred to in sub-section (3) shall issue to the payee a certificate of tax deduction and payment in such form in such manner as may be prescribed.

(5) Any tax paid to the State Government in accordance with sub-section (3) shall be adjustable by the payee, on the authority of the certificate issued to him under sub-section (4), with the tax payable by him under this Act and the assessing authority shall, on furnishing of such certificate to it, allow the benefit of such adjustment after due verification of the payment.

(6) If any person fails to deduct the whole or any part of the tax as required by or under the provisions of sub-section (1), or fails to pay the whole or any part of the tax as required by or under sub-section (3), then, the authority referred to in sub-section (3) may, at any time within five years of the close of the year when he failed to do so, by order in writing, direct him, after giving him a reasonable opportunity of being heard, to pay, by way of penalty, a sum equal to the amount of tax which he failed to deduct or pay as aforesaid.

Rule 16 (1) of the Rules

Submission of Return and Payment of Tax

(1) The class of dealers or the assesseees of the description specified in column 2 of the Table below shall for such period and at such intervals as mentioned in column 3 thereagainst furnish to the appropriate assessing authority on or before the last day of the month following the said period, a return in such form as is specified in the corresponding entry in column 4.

Table

<i>Sr. No.</i>	<i>Description of class or Classes of dealers</i>	<i>Return period and interval</i>	<i>Return Form</i>
1	2	3	4
1	Dealers who are required by the assessing authority to file returns by serving upon them a notice in Form VAT-N1 under clause (b) of sub-section (2) of section 14 so long as they are not covered by entry 3 below.	Quarter	VAT-R12
2	Registered dealers in whose case composition of tax under section 9 is made and is in force	As specified in the relevant rule relating to payment of lump sum for the specified class of dealers	
3.	Registered dealers holding registration certificate or whose application for registration is pending and who are not covered under entry 2 above	Quarter	VAT-R1
4.	Government agencies, public sector undertakings or corporations procuring food grains in the State at the minimum support price who are liable to deduct tax in advance under sub-rule (1) of rule 33	Quarter	VAT-R4
5.	Contractees who are liable to deduct tax in advance under sub-rule (2) of rule 33	Quarter	VAT-R4A

CHAPTER V

Payment of Tax and Other Dues and Refund

Rule 33

Deduction of Tax at Source

(1) Every Government agency, public sector undertaking or corporation procuring food grains in the State at the minimum support price (with or without bonus) fixed from time to time for such grains or any person authorised by such agency, undertaking or corporation in this behalf and acting as such, shall, at the time of making payment, whether by cash, adjustment, credit to the account, recovery of dues or in any other manner to the commission agent as valuable consideration for selling the grains, deduct tax in advance from such payment calculated by multiplying the amount paid

in any manner with four per cent or such other rate, as notified under sub-section (1) of section 24.

(2) Every contractee shall, at the time of making payment, whether by cash, adjustment, credit to the account, recovery of dues or in any other manner, deduct from the payment made to the contractor for execution of a works contract in the State involving transfer of property in goods, whether as goods or in some other form, tax in advance calculated by multiplying the amount paid in any manner with four per cent or such other rate, as notified under sub-section (1) of section 24.

Explanation. – For the purpose of the foregoing sub-rules, the valuable consideration shall not include the amount of tax, if any, forming part of the consideration.

(3) The provisions of sub-rules (1) and (2) shall not apply where the amount or the aggregate of the amounts paid or likely to be paid during a year to the supplier of grains or the contractor, as the case may be, does not or is not likely to exceed one lakh rupees.

(4) The provisions of sub-rule (2) shall not apply where both the contractee and the contractor are dealers registered under the Act and the contract relates to manufacture or processing of goods for sale.

(5) The amount, which any person is required to deduct in a month under the foregoing sub-rules, shall be paid by him within fifteen days of the close of the month into the appropriate Government Treasury in challan in Form VAT-C1 separately for each payee in the manner laid down in rule 35. The person making the payment shall affix the original copy of the challan with the return filed by him and shall furnish the fifth copy to the payee concerned as a certificate of tax deduction and payment, who shall affix it with his return.

Provided that the Commissioner may by order in writing permit such person to pay by grouping a number of payees in

a single challan or challans subject to each such challan showing the name of each payee and the amount deposited in respect of him separately:

Provided further that such person shall provide to each payee whose name appears in the challan a self-authenticated copy of the challan:

(6) The payee to whom a certificate of tax deduction and payment referred to in sub-rule (5) has been furnished shall, subject to verification of genuineness and correctness of the certificate, be entitled to deduct the amount shown in it from the amount of tax due from him for the period specified in the certificate and shall pay the balance in the manner laid down in rule 35 and any amount paid in excess shall be refundable on assessment.

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Rule 49 of the Rules

Lumpsum Scheme in Respect of Contractors

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(3) The lump sum contractor shall be liable to make payment of lump sum quarterly calculated at four per cent of the payments received or receivable by him during the quarter for execution of the contract. The payment of lump sum so calculated shall be made within thirty days following the close of the quarter after deducting therefrom the amount paid by the contractee on behalf of the contractor under section 24 for that quarter. The treasury receipt in proof of payment made and certificate(s) of tax deduction and payment obtained from the contractee shall be furnished with the quarterly return.

(4) The lump sum contractor shall file returns at quarterly intervals in Form VAT – R6 within a month of the close of the quarter and shall pay lump sum, if any, due from him according to such return after adjusting the amount paid under sub-rule (4).

15. It is not in dispute that the appellant is liable to pay tax as he is a works contractor. Section 9 of the Act enables the State Government to accept from any class of dealers in lieu of tax payable under the Act, by way of composition, a lump sum tax, determined in the manner prescribed. Rule 49(3) of the Rules prescribed for the year in question tax @ 4% of the payments received or receivable by a contractor during the quarter for execution of contract. It further provides that payment of lump sum so calculated is to be made within 30 days following close of the quarter, regularly. A contractor is entitled to deduct from the amount of tax payable by him, the amount paid by the contractee on his behalf under Section 24 of the Act. Treasury receipt in proof of payment made by the contractee is required to be furnished along with the returns, which are to be filed quarterly, within one month after the close of the quarter. The appellant being a contractor and liable to pay tax under the Act is a dealer registered under the Act. On failure of a dealer to pay tax in accordance with the provisions of the Act and the Rules, interest can be charged from him at the rates prescribed under Section 14(6) of the Act. Proviso thereto provides that the interest leviable under the Act shall not exceed the amount of tax or penalty on account of non-payment or late payment of which interest is charged.

16. Section 24 of the Act is a special provision providing for deduction of tax at source. It provides that in case of payment made by a contractee to a contractor for execution of a works contract, at the time of making payment, he is liable to deduct tax in advance at the rates specified by the government, subject to maximum of 10%. If the amount payable by a contractee is upto ₹ 1 lac, the provisions for deduction of TDS are not

applicable. The contractee is liable to furnish returns at specified intervals and pay tax in accordance with the returns, in the manner prescribed. Certificate for the tax deducted and paid is to be issued to the person on whose behalf tax was deducted and paid to Government. Any tax paid in accordance with the provisions of Section 24(2) is adjustable by payee on the authority of the certificate so issued against the tax payable by him. The claim is admissible on due verification of the payment. In case of failure of any person to deduct whole or any part of the tax to the department, the competent authority at any time within five years from the close of the year, to which the failure relates can levy penalty equal to the amount of tax which he failed to deduct or pay.

17. Rule 33 of the Rules provides for procedure for deduction of tax at source and deposit with the department. Rule 33(5) of the Rules provides that the amount of tax deducted by a contractee is to be paid by him to the department within 15 days of the close of the month. Original copy of the challan is to be furnished by him along with his returns, whereas 5th copy is to be supplied to the payee, a contractor as a certificate of deduction and payment of tax on his behalf. This copy is to be furnished by the contractor along with his returns. The payee to whom certificate of deduction and payment of tax has been furnished, shall be entitled to take credit thereof subject to verification of documents and correctness of the certificate.

18. Aforesaid Scheme of the Act and the Rules clearly defines rights and duties of the contractor and the contractee. Principal liability of payment of tax is on the contractor. He is liable to file periodic returns and pay tax accordingly. Parallel on the other side for advance collection of tax

and for better compliance, liability has been put on the contractee to deduct tax from the payments to the contractor. The amount of tax deducted is to be paid to the department as prescribed. The contractor is entitled to get credit of the tax paid on his behalf by the contractee from the tax payable by him. A contractor can claim credit of the tax paid on his behalf by a contractee only to the extent certificate has been issued to him by the contractee and the same has been attached by him along with the returns. Rest of the tax is to be paid by him along with the returns. Merely on presumption about deduction or payment of tax by the contractee on his behalf, a contractor cannot absolve himself from liability to pay tax as per the returns filed. The liabilities to pay interest and penalty on the contractor and levy of penalty on the contractee are independent for their respective defaults. It is not to be set off against each other. If the contractor has failed to pay tax as per the returns filed by him, he shall be liable to pay interest for the period of delay. Even if there is delayed payment of tax by the contractee, the contractor shall be entitled to claim benefit thereof at the time of framing of assessment and circulation of interest and entitlement of refund, if any, shall be determined at that time. In no case, there can be double charging of tax on the same transaction.

19. However, in case a contractor has attached the certificate issued by the contractee showing payment of tax on his behalf but on verification it is found that the tax had, in fact, not been paid by the contractee and the certificate was bogus and the contractor was not party to the fraud, the position may be different. In that eventuality, cases will have to be examined in facts of a particular case.

20. In the case in hand, it is not in dispute that the appellant is a

contractor executing works for different contractees. For the year in question, he got payments from them. As per provisions of the Act and the Rules, he is liable to pay the tax. His receipts are to the tune of ₹ 23,75,67,368/-. Tax payable by him was calculated at the rate of 4% to the tune of ₹ 95,02,695/-. On account of proofs attached by the appellant along with the returns showing payment of tax on his behalf by the contractees, deduction to the tune of ₹ 94,05,576/- was granted. As the assessing authority found that the tax had not been deposited in time, interest on account of delayed payment of tax was levied. As the order of assessment suggests part of the additional payment was also on account of less payment of tax. The delay in payment of tax as available in the calculation-sheet annexed with the order of assessment runs upto 1,384 days. For different payments, delay was for different periods.

21. The substantial questions of law, as referred to above, are answered accordingly. The case of the appellant be dealt with in terms of the law laid down above.

22. The appeal stands disposed of.

(Rajesh Bindal)
Judge

09.12.2016
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No