IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 35 of 2012 (O&M)

Date of Decision: 09.08.2016

M/s Amit Filling Station

.......Appellant

Versus

State of Haryana and others ......Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Rajiv Agnihotri, Advocate
for the appellant.

Ms. Mamta Singla Talwar, DAG Haryana.

RAJESH BINDAL,J.

The assessee has filed the present appeal arising out of an order dated 09.11.2011 passed by Full Bench of the Haryana Tax Full Member Tribunal, in STA No. 425 of 2010-11, raising the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the tax invoices and C-4 certificates obtained subsequently to assessment proceedings, can be produced at the stage when the matter is pending before Hon'ble High Court?

(ii) Whether in the facts and circumstances of the case when there is a sufficient reason for not producing the Tax invoices and C-4 Certificates which were lost during transit during the pendency of assessment proceedings, if subsequently received can be produced to claim the benefit of input tax which stands already deposited with the department?

Learned counsel for the appellant submitted that during the year in question the appellant had purchased petroleum products from M/s Hindustan Petroleum Corporation Ltd, for which tax was paid. The input tax credit was not allowed by the Assessing Authority as the tax invoices were lost. The appellant failed before the First Appellate Authority and the Tribunal as he could not get duplicate copy of tax invoices and statutory VAT-C-4 by that time. Subsequently the appellant obtained duplicate copy from the Selling Dealer and also VAT-C-4 in original.

It was further submitted that in response to an inquiry made by the appellant under the Right to Information Act, 2005, it was clarified by the Information Officer in the Excise and Taxation Department, Ambala, that the tax on the goods which were purchased by the appellant from M/s Hindustan Petroleum Corporation Ltd., had infact been paid. Referring to a judgment of this Court in <u>Jai Hanuman Stone Crushing Mills Versus State of Haryana and others 2014 (71) VST 199 (P&H)</u>, it was submitted that the statutory form and invoices can be produced at any stage of proceedings to claim the benefit of input tax credit. After the appellant got duplicate tax invoices from the Selling dealer and statutory form VAT-C-4 in original, the copies thereof have been placed on record along with the present appeal. A Division Bench judgment of this Court in <u>VATAP No. 37 of 2014, New Devi Grit Udyog Versus State of Haryana and others, decided on 8.9.2015</u>, is referred to submit that even if there is some error in the documents furnished by the dealer claiming input tax credit, the same is not fatal. The issue is to be examined by the Assessing Authority to find out from other material whether the tax has actually been paid by the

Selling Dealer of which input tax credit is being claimed by the Buying Dealer.

On the other hand, learned counsel for the State did not dispute the proposition of law as laid down in the aforesaid judgments. However, she submitted that the requisite documents should have been produced by the appellant at the appropriate time before the Assessing Authority to claim benefit of input tax credit.

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

The issue sought to be raised by learned counsel for the appellant is that it had paid tax on purchase of petroleum products from M/s Hindustan Petroleum Corporation Ltd. The tax invoices were lost. Hence, the same could not be produced before the Assessing Authority or even the Appellate Authority. Duplicates thereof were sought from the Selling Dealer in addition to statutory VAT-C-4, which were initially not issued by the Selling Dealer. It was claimed that the aforesaid documents clearly establish that the appellant had paid tax on purchase of petroleum products to the Selling Dealer. The copies of the tax invoices and the statutory form VAT-C-4 have been placed on record with the present appeal.

In **Jai Hanuman's case (supra)**, this Court opined that the forms can be produced even before the Appellate Authority. The dealer therein was granted permission to produce the same before the Assessing Authority, who was to determine the tax liability after considering those forms.

In **New Devi Grit Udyog's case (supra)** the claim of input tax credit was sought to be rejected on the ground of some error in tax invoices. This Court opined that it is not fatal as the fact that the tax on purchase of goods has been paid to the Selling Dealer who had further deposited with the State can be verified. In case tax was actually paid, the dealer should not be denied the benefit of input tax credit.

It was further pointed out by learned counsel for the appellant that in response to query under the Right to Information Act, 2005, the information was given that the Selling Dealer has deposited the tax collected from the appellant on the sale of petroleum products.

Keeping in view the aforesaid proposition of law and the fact that the appellant has produced the duplicate tax invoices and the statutory form VAT-C-4, along with the present appeal, in our view the appeal deserves to be accepted. The impugned orders passed by the Authorities are set aside. The matter is remitted back to the Assessing Authority for fresh determination of tax liability of the appellant after the appellant furnishes duplicate tax invoices and original statutory form VAT-C-4. In case payment of input tax is confirmed, the benefit be granted to the appellant.

The substantial questions of law are also answered accordingly.

The appellant is directed to appear before the Assessing

Authority, on 9.9.2016.

The appeal stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

09.08.2016
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No