

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

VATAP No. 65 of 2012 (O&M)

Date of decision: 05.10.2016

M/s Modern Dairies Limited

.... Appellant

VS

The State of Haryana and another

.... Respondents

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

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

1. The assessee is in appeal before this Court, which was admitted for determination of the following substantial question of law arising out of the order dated 16.3.2010 passed by the Haryana Tax Tribunal (for short, 'the Tribunal') in STA No. 393 and 394 of 2009-10:

“Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in rejecting the claim of the assessee for the Input Tax Credit, even though such purchases are not disqualified as per Schedule-'E' attached to the Haryan VAT Act, 2003?”

2. Learned counsel for the appellant submitted that the appellant is a registered dealer under the provisions of Haryana Value Added Tax Act, 2003 (for short, 'the Act'). It is engaged in the business of manufacture, sale and purchase of milk and milk products. For the assessment year in question, namely, 2005-06, the gross turnover of the appellant was

₹ 87,41,26,563/-. While framing the assessment vide order dated 30.1.2009, the Deputy Excise & Taxation Commissioner-cum-Assessing Authority, Karnal, rejected the input credit on purchases worth ₹ 29,86,837/-, as claimed by the appellant for purchase of machinery items, which were used in the process of manufacturing. The Assessing Authority was wrong in opining that the goods were in the nature of 'infrastructure goods'. Aggrieved against the rejection of input tax credit, the appellant preferred appeal to the Joint Excise & Taxation Commissioner (Appeals), Ambala, where the order passed by the Assessing Authority was upheld. Still aggrieved, the appellant preferred appeal before the Tribunal. The Tribunal while even noticing the kind of goods purchased, on which input tax credit was claimed, rejected the appeal. It is the aforesaid order, which has been challenged before this Court.

3. Learned counsel for the appellant submitted that Section 8 of the Act provides for determination of Input Tax Credit. In terms of the aforesaid section, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him, but shall not include tax paid in respect of goods specified in Schedule 'E' used or disposed of in the circumstances mentioned against such goods. Schedule 'E' appended to the Act provides for a list of goods where input tax is 'nil'. Serial No. 1 in the list will not be relevant as it provides for Petroleum products and natural gas. Serial No. 2 is also not relevant as it contains capital goods when intended to be used mainly in the manufacture of exempted goods or in the telecommunications, energy or mining or generation and distribution of electric energy or any other form of power or when it forms part of gross block on the date of cancellation of

registration certificate. Items at Serial Nos. 3 and 4 were omitted with effect from 1.7.2005, hence, will not be relevant for the assessment year in question. Item at Serial No. 5 provides for all goods except those mentioned at Serial Nos. 1 and 2. None of the circumstances as enumerated in column 3 of the Schedule exists in the present case on the eventuality of which the input tax credit will not be admissible.

4. Learned counsel for the petitioner further submitted that the kind of goods as have been noticed in the order of the Tribunal itself shows that those were part of the machinery being utilized in the process for manufacturing. There was nothing to suggest that with the kind of goods infrastructure could be created. He further referred to an earlier order passed by the Tribunal in Amir Chand Jagdish Kumar, Gharaunda, Karnal vs State of Haryana (2009) 33 PHT 182 (HTT), where tax paid on purchase of machinery and its part in manufacture of rice exported out of India was held to be admissible as input tax credit. Despite the earlier order of the Tribunal on the issue being there still a different view was taken. Hence, the action of the authorities is totally contrary to the provisions of law. The substantial question of law deserves to be answered in favour of the assessee.

5. On the other hand, learned counsel for the State submitted that Section 2(1)(w) of the Act defines 'input tax', whereas Section 2(1)(zl) of the Act defines 'input invoice'. It clearly mentions that the goods must be used for manufacturing or processing of goods for sale. Section 8 of the Act and Schedule-'E' are not to be read in isolation, rather these are to be read together with Sections 2(1)(w) and 2(1)(zl) of the Act. Some of the goods in question were used by the appellant for construction of building, hence, input tax credit has rightly been declined by the authorities. The earlier

order passed by the Tribunal in the case of Amir Chand Jagdish Kumar, Gharaunda, Karnal's case (supra) is distinguishable as in that case the tax was paid on purchase of machinery and its parts, which were used for manufacture of rice.

6. In response, learned counsel for the appellant submitted that even if the goods purchased by the appellant fall in the category of capital goods, still if Schedule-'E' is read, the appellant will be entitled to input tax credit on their purchase as none of the circumstance exists on account of which the input tax credit shall be 'nil'. 'Capital goods' have been defined in Section 2(1)(g) of the Act.

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

8. The relevant provisions of the Act are reproduced hereunder:-

“2(1)(g) “capital goods” means plant, machinery, dies, tools and equipment purchased for use in the State in manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or other form of power, provided such purchase is capitalised;

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2(1)(w) “input tax” means the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of section 8;

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2(1)(zl) “tax invoice” means an invoice required to be issued according to the provisions of sub-section (2) of section 28 by a VAT dealer for sale of taxable goods to another VAT dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax in accordance with the provisions of section 8;

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Section 8. (1) Input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him and shall, in case of a dealer who is liable to pay tax under sub-section(1) of section 3 or, as the case may be, makes an application for registration in time under sub-section(2) of section 11, include the tax paid under this Act and the Act of 1973 in respect of goods (except capital goods) held in stock by him on the day he becomes liable to pay tax but shall not include tax paid in respect of goods specified in Schedule E used or disposed of in the circumstances mentioned against such goods:

Provided that where the goods purchased in the State are used or disposed of partly in the circumstances mentioned in Schedule E and partly otherwise, the input tax in respect of such goods shall be computed pro rata:

Provided further that if input tax in respect of any goods purchased in the State has been availed of but such goods are subsequently used or disposed of in the circumstances mentioned in Schedule E, the input tax in respect of such goods shall be reversed.

(2) A tax invoice issued to a VAT dealer showing the tax charged to him on the sale of invoiced goods shall, subject to the provisions of sub-section (3), be sufficient proof of the tax paid on such goods for the purpose of sub-section (1).

(3) Where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished to him in the prescribed form and manner by the selling dealer; and such authority shall allow the claim only if it is satisfied after making such inquiry as it may deem necessary that the particulars contained in the certificate produced before it are true and correct.

(4) The State Government may, from time to time, frame rules consistent with the provisions of this Act for computation of input tax and when such rules are framed, no input tax shall be computed except in accordance with such rules.

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SCHEDULE - E

(Refer sub-section (1) of section 8)

<i>Sr. No.</i>	<i>Description of goods</i>	<i>Circumstances in which input tax shall be nil</i>
1	2	3
1	Petroleum products and natural gas	(i) When used as fuel (ii) When exported out of State.
2.	Capital goods	(i) When intended to be used mainly in the manufacture of exempted goods or in the telecommunications network or mining or the generation and distribution of electric energy or other form of power; or (ii) When forming part of gross block on the date of cancellation of the registration certificate.
3	(x x x)	
4	(x x x)	
5	All goods except those mentioned at Serial Nos. 1 and 2	(i) When used telecommunications network, in mining, or the generation and distribution of electricity or other form of power; (ii) When exported out of State or disposed of otherwise than by sale; (iii) When used in the manufacture or packing of exempted goods except when such goods are sold in the course of export of goods out of the territory of India; (iv) When used in manufacture or packing of taxable goods which are exported out of State or disposed of otherwise than by sale; (v) When left in stock, whether in the form purchased or in manufactured or processed form, on the date of cancellation of the registration certificate. (vi) When sold by Canteen Store Department.

9. The kind of goods purchased by the appellant, input tax credit on which has been declined, as noticed in the order passed by the Tribunal,

are extracted below:-

“cooper wire, Taflon Tape, Gasket, Union, Socket etc. Fire Bricks or Boiler, G. I. Pipe, M.S. Angle, Flat, T. Iron, M.S. Flange, Drill, Shaft sleeve, Industrial Fan, M.S. Channel, Angle, Fire Bricks, Rubber Ring, Electric Cable, Wire Cold Rolled Strips, Tape Cutter, etc.”

10. A perusal of the aforesaid goods shows that none of them can be said to be of the category, which are used for construction of building, rather these are parts of machinery. In fact, none of the authorities were very clear on the issue as vague findings were recorded. The Assessing Authority opined that these were 'infrastructure goods'. The First Appellate Authority was again vague while opining that these were used in building, etc. or used in tax free sales or covered in job work activities, whereas the Tribunal again opined that these were related to infrastructure activities.

11. The term 'capital goods' has been defined in Section 2(1)(g) of the Act to mean plant, machinery, dies, tools and equipment purchased for use in the State in manufacture or processing of goods for sale. 'Input Tax' has been defined in Section 2(1)(w) of the Act to mean the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of Section 8 of the Act. “Tax Invoice” has been defined in Section 2(1)(zl) of the Act to mean an invoice required to be issued as per Section 28 (2) of the Act for sale of taxable goods by a dealer to another dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax as per provisions of Section 8 of the Act. Section 8(1) of the Act provides that input tax in respect of any good purchased by a VAT dealer shall be the amount of tax paid to the State on the

sale of such good to him but shall not include tax paid in respect of goods specified in Schedule 'E' used or disposed of in the circumstances mentioned against such goods. Schedule-'E' at the relevant time provided for three different categories of goods wherein in the circumstances mentioned in column 3 thereof the input tax credit was 'nil'.

12. The goods purchased by the appellant do not fall in the categories described at Sr. Nos. 1 and 2.

13. Entry 5 in Schedule-'E' is general in nature. All goods which are not forming part of the goods mentioned at Sr. Nos. 1 and 2 will form part of this entry. If the goods purchased by the appellant were not in the category of capital goods, the same will fall in the goods mentioned at Sr. No. 5. Considering the conditions as provided in column no.3, the appellant is not in the business of telecommunication, mining or generation and distribution of electricity, hence, the goods could not possibly be used for that purpose. The goods have not been exported out of State or disposed of otherwise than by way of sale. Clause (iii) in the circumstances mentioned in Column 5 provides that if the goods have been used in manufacture or packing of exempted goods then the benefit of input tax credit is not available. Conditions laid down in Clauses (iv) and (v), are also not applicable in the case in hand as neither the goods are in stock nor those have been sold to Canteen Store Department. First proviso to Section 8(1) of the Act provides that if the goods so purchased in the State are used or disposed of partly in the circumstance mentioned in Schedule "E' and partly otherwise the input tax credit in respect of such goods shall be computed on pro-rata basis.

14. Accordingly the appellant shall be entitled to input tax credit on the goods purchased by him. However, while calculating input tax credit conditions in Schedule 'E' and provisos to Section 8(1) of the Act have to be kept in view.

15. For the reasons mentioned above, the substantial question of law, as referred to above, is answered accordingly. The appeal is disposed of.

(Rajesh Bindal)
Judge

05.10.2016
vs

(Darshan Singh)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No