

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 12 of 2016 (O&M)
Date of decision: August 04, 2016

M/s Khanna Paper Mills Ltd.

.. Appellant

v.

The State of Punjab and another

.. Respondents

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

Present: Mr. K. L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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Rajesh Bindal J.

The appellant has filed the present appeal arising out of the order dated 4.12.2015, passed by the Value Added Tax Tribunal, Punjab (for short, 'the Tribunal'), raising the following substantial questions of law:

“(i) Whether on the facts and in the circumstances of the case, the appellant is entitled for input tax credit on the tax paid by it under the Punjab VAT Act 2005 on the purchases of pet coke where it is used for generation of electrical energy for captive

consumption?

(ii) Whether on the facts and in the circumstances of the case, the restrictions mentioned in Section 13(5)(i) read with Section 13(4) are applicable on the purchase of pet coke?

(iii) Whether on the facts and in the circumstances of the case, the impugned order is violative of principles of natural justice as all the issues raised before the Tribunal have not been dealt in the order?

(iv) Whether on the facts and in the circumstances of the case, the clarification issued by the Ld. Commissioner in the case of Avon Ispat and Power Ltd. is applicable to the present case?”

However, we find that only the following question of law arises for determination by this court:

“(i) Whether on the facts and in the circumstances of the case, the appellant is entitled for input tax credit on the tax paid by it under the Punjab VAT Act 2005 on the purchases of pet coke where it is used for generation of electrical energy for captive consumption?”

Learned counsel for the appellant submitted that the appellant is a manufacturer of paper and paper products. Its factory is situated at Fatehgarh Road, Amritsar. During the course of manufacturing process, the appellant uses various raw materials including waste paper, chemicals, packing material and pet coke. The goods manufactured by the appellant are either sold during the course of intra-state or inter-state trade. Pet coke is purchased by the appellant for generation of power for captive consumption.

Value added tax is paid thereon @ 4.5% with surcharge @ 10% thereon. As

the appellant is entitled to input tax credit on pet coke used in generation of power for captive consumption in terms of the provisions of Section 13 of the Punjab Value Added Tax Act, 2005 (for short, 'the Act'), however, with a view to avoid any ambiguity later on, a clarification was sought vide application dated 16.12.2012 filed under Section 85 of the Act to the Excise and Taxation Commissioner for clarifying the issue regarding entitlement of the appellant to input tax credit on the transactions, as referred to above. The Excise and Taxation Commissioner, vide order dated 26.4.2014, clarified that the appellant will not be entitled to benefit of input tax credit as the same is available on the goods mentioned in Section 13(4) of the Act. The order was challenged before the Tribunal, who vide its order dated 4.12.2015 dismissed the appeal relying upon an earlier judgment of this court in State of Punjab and others v. Malwa Cotton & Spinning Mills Ltd., (2011) 39 VST 65 (P&H).

While impugning the orders passed by the Excise & Taxation Commissioner as well as the Tribunal, learned counsel for the appellant submitted that the provisions of Section 13 of the Act, which provide for input tax credit, are quite explicit. Section 13(5)(i) of the Act clearly provides that on the goods used for generation of power for captive consumption, input tax credit is available. The only exceptions are provided for in Section 13(5)(b) of the Act and with reference to the amount of tax and goods on which input tax credit can be claimed are mentioned in Section 13(4) of the Act. He further submitted that there is already a clarification issued by the Excise & Taxation Commissioner in the case of Avon Ispat and Power Ltd., Ludhiana on 2.12.2011 regarding entitlement of full input tax credit on heavy petroleum stock. In that case, the Excise &

Taxation Commissioner opined that the dealer shall be entitled to full input tax credit of the entry tax paid thereon as it is not one of the goods mentioned in Section 13(4) or 13(5)(b) of the Act. He further submitted that the said clarification has neither been withdrawn nor superseded till date. Further, the submission is that the judgment of this Court in Malwa Cotton & Spinning Mills Ltd.'s case (supra) is also distinguishable for the reason that the issue raised therein was regarding input tax credit on diesel, which is an item specifically mentioned in the exception clause in Section 13(5)(b) of the Act, hence, not applicable.

On the other hand, learned counsel for the State submitted that Section 13(1) of the Act is a general section providing for input tax credit, however, the same will have to give way to the special provision providing for input tax credit on the goods, which are used for generation of power for captive consumption, for which Sections 13(4) and 13(5)(b)(i) of the Act are relevant. As admittedly the appellant is using pet coke for generation of power for captive consumption, it is not entitled to input tax credit thereon.

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

The relevant provisions of Section 13 of the Act are extracted below:

“SECTION 13. INPUT TAX CREDIT:

(1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:

PROVIDED THAT the input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-State trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:

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(4) Input tax credit on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, shall be allowed only to the extent by which the amount of tax paid in the State exceeds [five percent]:

PROVIDED THAT these goods are used in production of taxable goods or captive generation of power.

(5) A taxable person under this section, shall not qualify for input tax credit in respect of tax paid on purchase of,-

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(b) petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of setting such products;

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(i) goods used in generation, distribution and transmission of electrical energy unless such generation, distribution and transmission of electrical energy is for captive consumption, in which case it would be allowed subject to provisions of sub-section (4) of this section:

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The appellant in the present case is purchasing pet coke for the purpose of generation of power for captive consumption, on which input tax credit is claimed.

A perusal of Section 13(1) of the Act shows that a taxable person shall be entitled to input tax credit in respect of input tax paid on taxable goods purchased from a taxable person within the State if goods are sold within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India.

Sub -section (4) of Section 13 of the Act restricts the benefit of input tax credit over and above 5% on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, if these goods are used in production of taxable goods or captive generation of power.

Sub-section (5) of Section 13 of the Act provides for a negative list stating that a taxable person shall not be entitled to input tax credit in respect of the tax paid on specified goods on purchase thereof. Clause (b) thereof provides that input tax credit is not available on purchase of petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of sale of such products. Clause (i) of sub-section (5) of the Act provides that even on the goods used in generation, distribution and transmission of electrical energy also input tax credit is not available, unless such generation, distribution and transmission of electrical energy is for captive consumption. In that case,

the benefit is allowable subject to provisions of Section 13(4) of the Act.

It is not in dispute that the goods purchased by the appellant, which are used in generation of power for captive consumption are not mentioned either in Section 13(4) or in Section 13(5)(b) of the Act.

Though Section 13(5) of the Act contains the list of goods on which input tax credit is not available under certain conditions, however, in clause (i) thereof, while providing that input tax credit will not be available on goods used in generation, distribution and transmission of electrical energy, but it further provides that in case it is used for generation, distribution and transmission of electrical energy for captive consumption, the benefit of input tax credit shall be available subject to the provisions of sub-section (4) of Section 13 of the Act. Section 13(4) of the Act enumerates certain specific goods for the purpose of entitlement of input tax credit in case those are used in production of taxable goods or for captive generation of power. It further provides that benefit shall be available only in case the tax already paid exceeds 5%. The fact is that provision has been made in Section 13(5)(i) of the Act for permitting input tax credit on all goods used for generation, distribution and transmission of electrical energy if used for captive consumption. The spirit thereof cannot be ignored. It has been made subject to Section 13(4) of the Act, where certain specified goods have been mentioned, which could be used for captive generation of power and on which input tax credit is available, but over and above 5%. While the scope of goods to be used in captive generation of power has been extended in Section 13(5)(i) of the Act, the same has to be given full meaning. The only restriction is that the benefit has to be subject to the provisions of Section 13(4) of the Act. While harmoniously constructing

both the provisions, the only conclusion which can be arrived is that on the goods specifically mentioned in Section 13(4) of the Act, the benefit shall be available to the extent provided therein, whereas on the other goods, there would be no restriction as such for claiming the benefit of input tax credit, except those specifically mentioned in Section 13(5)(b) of the Act, namely, petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, as even many of those goods may be used in generation of power for captive consumption.

In similar line was the clarification given by the Excise and Taxation Commissioner in the case of Avon Ispat and Power Ltd., Ludhiana, where heavy petroleum stock, being not one of the items mentioned in Section 13(4) or Section 13(5)(b) of the Act, the Excise and Taxation Commissioner opined that full input tax credit of the entry tax paid on purchase thereof shall be available in view of Section 13 read with Section 13A of the Act.

As far as the judgment of this court in Malwa Cotton & Spinning Mills Ltd.'s case (supra) is concerned, it was a case of claim of input tax credit on diesel, for which there is a specific provision in Section 13(5)(b) of the Act, which debars input tax credit to a person on purchase of petrol, unless he is in the business of selling that product. The undisputed fact in the present appeal is that pet coke, which the appellant is purchasing for use in production of power for captive consumption, is not mentioned in Section 13(5)(b) of the Act, for dis-entitling the appellant input tax credit thereon in its entirety or restricting the claim to certain limit, as provided in Section 13(4) of the Act.

For the reasons mentioned above, the appeal is allowed. The substantial question of law is answered in positive in favour of the assessee holding that the appellant shall be entitled to full input tax credit of the tax paid on purchase pet coke, where it is used for generation of power for captive consumption.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 04, 2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No