IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-12-2017

Date of Decision: 9.8.2017

M/s Bata India Ltd., Faridabad

....Appellant.

Versus

State of Haryana and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

HON'BLE MR. JUSTICE AMIT RAWAL.

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

Ms. Mamta Singal Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 3.2.2014 (Annexure A-6) and dated 21.12.2016 (Annexure A-8) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 417 of 2014-15, for the assessment year 1984-85, claiming the following substantial questions of law:-

i) Whether in the facts and circumstances of the case, the Haryana Tax Tribunal was right in confirming dismissal of appeal by the first appellate authority in default when the first appellate authority itself entertained the appeal after the compliance of the order of the Tribunal by paying first installment and filing of Bank Guarantee for the rest of the amount?

ii) Whether in the facts and circumstances of the case, whether appellant is required to continue to pay further installments when the appeal is entertained after payment of first installment and judgment is reserved?

iii) Whether in the facts and circumstances of the case the authorities below are not wrong in not appreciating the settled law that condition for payment is only for the purpose of entertainment of appeal and once the appeal is entertained, the interim order ceases to exist?

iv) Whether in the facts and circumstances of the case, the authorities below are not wrong in not appreciating the facts that whole of the amount paid along with security stood submitted at the time of dismissing the appeal as well as the first appellate authority was wrong in not appreciating that the initiation of the proceedings and framing of assessment itself is bad and further that notices were not properly and legally communicated when the business of the appellant is lying closed and application for cancellation of registration certificate is pending cancellation?

v) Whether in the facts and circumstances of the case, the Tribunal is not wrong in dismissing the appeal in limine when on merits the appellant is conducting job work of painting and power coating material supplied by the contractee and when there is no transfer of property in goods and hence question of tax does not arise which is also clear from the previous year's assessment orders?

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The Assessing Authority vide order dated 26.9.1986 framed the assessment for the year 1984-85. Lateron, the Assessing Authority on the basis of some information framed reassessment vide order dated 29.1.1991 leving tax and penalty of ₹ 30,89,121/-. Due to late payment of additional demand of ₹ 30,89,121/-, the Assessing Authority vide order dated 19.9.2003 (Annexure A-1) charged interest amounting to ₹ 50,70,578/- under Section 59 of the Haryana General Sales Tax Act, 1973. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) [for brevity "the JETC (Appeals)"]. Along with the appeal, the appellant moved an application for stay of recovery proceedings. The JETC(Appeals) vide order dated 3.2.2004 (Annexure A-2) directed the appellant to pay entire additional demand. Against the order, Annexure A-2, the appellant filed an appeal before the Tribunal who vide order dated 8.3.2006 (Annexure A-3), directed the appellant to deposit a sum of ₹ 30 lakhs in six equated monthly installments and to furnish security qua the entire balance amount. In pursuance thereto, the appellant deposited ₹ 5 lakhs along with bank guarantee for ₹ 45,70,587/- vide letter dated 30.4.2006 (Annexure A-4).

Vide order dated 15.5.2006 (Annexure A-5), the appeal was heard on merits and the judgment was reserved. On 20.6.2007, again the matter was listed for hearing. Thereafter, the matter was being adjourned for various dates. Finally, the JETC(Appeals) vide order dated 3.2.2014 (Annexure A-6) dismissed the appeal in default for non-compliance of the order of the Tribunal. Against the order, Annexure A-6, the appellant filed an appeal on 10.6.2014 (Annexure A-7) before the Tribunal. The Tribunal vide order dated 21.12.2016 (Annexure A-8) upheld the order of the JETC (Appeals) and dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant submitted that all the installments have now been deposited though there was delay in depositing the same for which interest of ₹ 10,72,500/- has been paid on 8.8.2017. It was, thus, urged that in such circumstances, the orders dated 3.2.2014 (Annexure A-6) and dated 21.12.2016 (Annexure A-8) passed by the JETC (A) and the Tribunal, respectively be set aside and the JETC(A) be directed to hear the appeal on merits.

5. On the other hand, learned State counsel has not disputed that the amount stands deposited along with interest of ₹ 10,72,500/-.

6. The Assessing Authority created additional demand of ₹ 50,70,578/- against the appellant for the assessment year 1984-85. Against the said demand, the appellant filed an appeal before the JETC (Appeals) who vide order dated 3.2.2014 (Annexure A-6) dismissed the appeal for non-compliance of the order dated 8.3.2006 passed by the Tribunal regarding payment of part amount of the additional demand and furnishing of security for the balance amount. Against the said order,

Annexure A-6, the appellant filed the appeal before the Tribunal and the Tribunal vide order dated 21.12.2016 (Annexure A-8) dismissed the appeal. Admittedly, the appellant has now deposited all the installments. Since there was a delay in depositing the installments, the appellant had also paid interest amounting to ₹ 10,72,500/- on 8.8.2017.

7. In view of the above, the orders dated 3.2.2014 (Annexure A-6) passed by the JETC (Appeals) and dated 21.12.2016 (Annexure A-8) passed by the Tribunal are set aside. The delay, if any, in depositing the installments stands condoned. The matter is remanded to the JETC(A) to decide the appeal on merits, in accordance with law.

8. The appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

August 9, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**