

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

**CWP No. 4453 of 2015
Date of decision: 23.05.2018**

M/s Camco Multi Metal Limited, Faridabad through its Authorised Representative, M.L. Banka S/o Sh. Subhkaran Banka, Age 59 years, R/o C-48, Ist Floor, 11-C, Faridabad-121006

.....Petitioner

Vs.

State of Haryana through Financial Commissioner and Secretary Department of Excise and Taxation, Government of Haryana, Civil Secretariat, Chandigarh and others.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr. Rajiv Agnihorti, Advocate for the petitioner(s)/appellant(s).
Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,(ACJ)

1. This order shall dispose of CWP Nos. 4453 of 2015, 18371, 19397, 19580 and 21593 of 2016 as according to the learned counsel for the appellant-assessee, the issue involved in all these petitions is identical.

However, the facts are being extracted from CWP No. 4453 of 2015.

2. The Excise and Taxation Officer passed assessment order dated 08.11.2012, Annexure P.1 under the provisions of Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") which was assailed by the petitioner by filing appeal before the Joint Excise and Taxation Commissioner (Appeals) [in short, "the JETC(A)"]. The petitioner has approached this Court through the instant writ petition without exhausting the remedy of the appeal before the Tribunal.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a company, registered under the Companies Act, 1956. It is engaged in the business of manufacture of Aluminium Alloy Ingots from Aluminium Scrap and Zinc Alloy Ingots. Aluminium Scrap is being imported from out of India and the petitioner is required to pay import duty for the same. It purchases DEPB after payment of tax from within the State of Haryana as the same are goods. These were used in payment of duty on import of goods from out of country which was used in the manufacture of these ingots for sale on which tax is charged and deposited with the department. Assessment proceedings were initiated under Section 15(3) of the HVAT Act. The assessing authority disallowed the benefit of input tax credit on the purchase of DEPB vide order dated 08.11.2012, Annexure P.1. Aggrieved by the order, the petitioner filed an appeal before the first appellate authority i.e. JETC (A). Vide order dated 27.08.2014, Annexure P.3, the appeal was dismissed, relying upon clarification issued by the Principal Secretary to Government of Haryana, Excise and Taxation Department dated 22.04.2013 in case of M/s Whirlpool of India Limited, Faridabad. The Tribunal on 11.11.2011 passed order rejecting the issue in question in the case of *M/s Enkay (India) Rubber Company Private Limited* against which appeal is pending in this Court being VATAP No. 71 of 2012. Hence the instant writ petitions by the petitioner(s).

4. We have heard learned counsel for the parties.

5. The primary contention of the learned counsel for the petitioner(s) instead of availing remedy of appeal before the Tribunal was that similar issue had already been adjudicated by three Members of the Tribunal in the case of *M/s Enkay (India) Rubber Co. Private Limited Vs. The State of Haryana*,

STA No. 50 of 2011-12 decided on 11.11.2011 against which the assessee therein had already filed VATAP No. 71 of 2012 in this Court and the same is pending.

6. In view of the order of even date passed in VATAP No. 71 of 2012 wherein after setting aside the impugned order, the matter has been remanded to the Tribunal, it is considered appropriate that the petitioner(s) are relegated to the alternate remedy of appeal before the Tribunal against the orders of JETC (A). While disposing of the writ petitions, we permit the petitioner(s) 30 days time to file appeals before the Tribunal. In case, such appeals are filed within the stipulated period, the same shall be treated to be within limitation and not dismissed by the Tribunal on the ground of limitation and decided on merits in accordance with law.

(Ajay Kumar Mittal)
Acting Chief Justice

May 23, 2018
‘gs’

(Tejinder Singh Dhindsa)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes