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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.78 of 2011 (O&M)
Date of Decision: 11.07.2018

Saraswati Sugar Mills Limited

...... Appellant

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Alok Mittal, Advocate
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

RAJESH BINDAL J.

This order will dispose of six appeals bearing VATAP Nos.65 to 68 of 2014, 78 and 79 of 2011 which are pertaining to assessment years 1987-88. The facts have been noticed from VATAP No.78 of 2011.

The assessee in the present case was engaged in the manufacture and sale of goods including sugar. Assessment for the year 1987-88 was framed by the assessing authority under Section 28 of the Haryana General Sales Tax Act, 1973 (for short 'the Act') vide order dated 27.03.1991 levying purchase tax on the goods purchased for the manufacture of the sugar, which was tax free.

The order was upheld in appeal by the Joint Excise & Taxation Commissioner (Appeals), Ambala and the Haryana Tax Tribunal, Chandigarh.

Section 9 of the Act was struck down by Hon'ble the Supreme Court in '*Good Year India Limited and Another vs. The State of Haryana* *and Another*' AIR 1990 SC 781. However, subsequently, amendment was carried on in the Haryana General Sales Tax Act, 1973 and Section 6 was amended vide Act No.1 of 1990 as published on 16.04.1991 with retrospective effect from 27.05.1971.

Section 6 of the Act being the charging section, clearly provides that last purchase of goods except in the cases when the purchase is made on payment of tax, is taxable.

The issue sought to be raised by the appellant is that the sugarcane purchased by him was used in the process of manufacture of sugar, which should not be treated as tax free item for the reason that additional excise duty is payable on that in lieu of sales tax in terms of the provisions of the Additional Duty of Excise (Goods of Special Importance) Act, 1957.

This issue is not required to be considered in view of the provisions of Section 6 of the Act. It was the case set up by the Department before the Authorities that purchases on which the appellant is claiming exemption from payment of tax were made on the strength of registration certificate without payment of tax, hence, tax was levied. Subsequent, to the filing of the appeals in this Court, an affidavit dated 04.04.2014 was filed by R. K. Nain, Excise and Taxation Officer-cum-Assessing Authority, Yamuna Nagar. Para 4 (iii) thereof is extracted below:-

> "(iii) In the present case purchase tax has been levied on the goods used in the manufacturing of tax free goods i.e. sugar. It is further respectfully stated that the purchase

> tax was leviable on such goods (used in manufacturing of tax free goods) under charging Section 6(1)(c)(ii) of the then Haryana General Sales Tax Act, 1973. It is not the case of the petitioner/appellant that he had purchased the goods (used in manufacturing of tax free goods) after payment of tax. Rather, these goods were purchased on the strength of registration certificate (against form ST-15) without payment of tax. The provisions of Section 6 (1)(c)(ii) are reproduced below for ready reference:-
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> "last purchase in all other cases except when the purchase is made on payment of tax."

The aforesaid paragraph clearly mentions that the appellant in the present case had purchased the goods used in manufacture of sugar, a tax free item, without payment of tax, on the strength of registration certificate.

As Section 6 (1)(c)(ii) of the Act clearly provides for levy of purchase tax on all purchases, we do not find any question of law arises in the present appeals. Accordingly, the same are dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

11.07.2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No