IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 71 of 2012
Date of decision: 23.05.2018

M/s Enkay (India) Rubber Company Private Limited, Gurgaon, R/o N-141, New Palam Vihar, Gurgaon (Haryana) through Mr. Ravi Shanker Tiku, Sr. Manager of the Company.

……Appellant

Vs.

State of Haryana through its Financial Commissioner & Principal Secretary to Govt. Haryana, Excise and Taxation Department, New Civil Secretariat, Sector-17, 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 appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,(ACJ)

1. The appellant-assessee has filed the instant appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated 15.02.2010, 23.02.2011 and 11.11.2011, Annexures A.1, A.2 and A.4, passed by Excise and Taxation, Officer-cum-Assessing Authority, Joint Excise and Taxation Commissioner (Appeals) [JETC(A)] and the Haryana Tax Tribunal (in short, "the

Tribunal") respectively in S.T.A. No.50 of 2011-12 , claiming following substantial questions of law:-

> "(i) Whether the assessee-appellant is not entitled to input tax credit on tax paid on purchase of DEPB license which were used in import of raw material which was used in the manufacture of goods for sale?
>
> (ii) Whether the provisions of Section 8 have not been complied with?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-company is engaged in the manufacturing and trading of soles of shoes from polyurethane material etc. Assessment proceedings were initiated for the assessment year 2006-07 under Section 15(2) of the HVAT Act. Assessing Authority disallowed the benefit of input tax credit on the purchase of DEPB vide order dated 15.02.2010, Annexure A.1. The appeal filed by appellant before the first appellate authority i.e. JETC(A) was dismissed vide order dated 23.02.2011, Annexure A.2. The appellant filed an appeal before the Tribunal which also met with the same fate vide order dated 11.11.2011, Annexure A.4. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. On perusal of the order passed by the Tribunal, we find that though the Tribunal had concluded that the assessee could not claim Input Tax Credit under Section 8 of the HVAT but no discussion with regard to essential requirements of Section 8 of the HVAT has been made therein. Accordingly, the issue with regard to interpretation of Section 8(1) of the HVAT Act requires to be revisited by the Tribunal as no clear finding has

been recorded by the Tribunal in respect of whether DEPB which was used in import of raw material was used in the manufacture of goods for sale in the State of Haryana or not.

5. In view of the above, matter is remanded to the Tribunal to decide it afresh after hearing the parties by passing a speaking order in accordance with law. The appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Acting Chief Justice

May 23, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**