

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

VATAP No. 94 of 2012 (O&M)

Date of decision: 12.7.2018

M/s Riviera Home Furnishings Private Limited .. Appellant

VS

The State of Haryana and another .. Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal**

Present: Mr. Sandeep Goyal, Advocate, for the appellant.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

1. This order will dispose of six appeals bearing VATAP No. 94 to 99 of 2012, as common issue is involved.
2. The facts have been taken from VATAP No. 94 of 2012.
3. The assessee is in appeal raising the following substantial question of law arising out of order dated 3.8.2009 passed by the Haryana Tax Tribunal, Chandigarh (for short, 'the Tribunal') in STA No. 183 of 2009-10 :

“(i) Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding that Input Tax Credit is not admissible on purchase of Generator sets and its parts which are

capital goods and used in the generation of electricity, which has been used in manufacturing of taxable goods for sale ?”

4. It is pleaded that the appellant is engaged in the business of manufacturing and trading of bath mats and carpets, etc. The goods manufactured by the appellant are primarily exported out of country. Due to shortage of power supply and to meet the deadline for supply of export commitments, the appellant had purchased generator sets. The dispute arose with reference to claim of input tax credit of the tax paid on the purchase thereof. While framing the assessment, the assessing authority declined that claim. The order was upheld by the First Appellate Authority as well as by the Tribunal.

5. Learned counsel for the appellant submitted that claim of the input tax credit was wrongly rejected by the department. Even the Appellate Authority as well as the Tribunal failed to appreciate the real controversy. They had been referring to wrong provisions of law for the purpose of declining the claim. Entries at Sr. No. 5 (i) and 5 (ii) in Schedule-E of the Haryana Value Added Tax Act, 2003 (for short, 'the Act'), are not applicable in the case in hand. He further submitted that after the appeal of the appellant was decided as the issue was arising in number of cases, M/s Bhaskar Gensets Private Limited sought clarification from the department invoking provisions of Section 56 (3) of the Act on the issue as to whether the diesel generating set is part of the plant and machinery and further as to whether input tax credit of the tax paid on the purchase thereof is available. The same was answered in positive vide letter No. 287-289/ST.1 dated 5.3.2010. In fact, subsequent thereto in STA No. 176 of 2010-11 Suzuki

Powertrain India Limited, Gurgaon vs State of Haryana, wherein identical issue was involved, the Tribunal while referring to the aforesaid clarification issued by the Government allowed the appeal of the assessee, vide order dated 5.8.2010. He further submitted that the aforesaid order was accepted by the department as no further proceedings were taken. Once the State had itself issued clarification on the issue, the appellant has wrongly been deprived of the relief in terms thereof.

6. On the other hand, learned counsel for the State could neither deny the instructions issued by the department nor order passed by the Tribunal in Suzuki Powertrain India Limited, Gurgaon's case (supra), vide which relying upon the clarification issued by the State, appeal of the assessee was accepted granting benefit of input tax credit of the tax paid on purchase of diesel generator set and the components thereof, which were used for generation of power for running the plant and machinery for production of goods.

7. After hearing learned counsel for the parties, we find merit in the contention raised by learned counsel for the appellant. The fact that the appellant is engaged in the manufacturing and export of bath mats, carpets, etc., is not in dispute. The assessee had purchased generator set to be used as a standby source of power for uninterrupted power supply. It was required for the reason that the appellant being engaged in the export of goods manufactured by it was required to meet the deadline to execute the export order. As per the assessment order for the year in question, out of the total turn over of ₹ 20,10,83,705/- exports outside the country were to the tune of ₹ 20,02,89,447/-. The issue is with reference to claim of input tax credit of the tax paid on purchase of diesel generating set, which was being

used for the purpose of generation of power, if required, for running the plant and machinery for production of goods.

8. After the appeal of the appellant was decided as the issue was pending in number of cases, clarification was sought by M/s Bhaskar Gensets Private Limited, Gurgaon, from the State by filing application invoking provisions of Section 56(3) of the Act. Clarification was sought on the issue as to whether the diesel generating set is part of the plant and machinery and further as to whether input tax credit of the tax paid on purchase thereof is available. The questions were answered in positive.

Relevant part of the clarification is extracted below:-

“No doubt when the Diesel Generating Set is being used as a standby generator to ensure uninterrupted power supply to the manufacturing plant the same is a part of plant and machinery. However when the same is being used in domestic sector, the same can not be termed as a part of plant and machinery. As to the decision of screening committee Haryana for deferment of sales tax, point under consideration in that case was of different nature and the same was whether, for the purpose of working out the cost of plant and machinery, for the purpose of deferment of sales tax, generating set forms a part of plant and machinery or not. Since generating set in such a situation facilitates the smooth running of the plant and machinery the same undoubtedly is a part of plant and machinery. However, there can not be an absolute approach in regard to interpretation of this item. When the same is being used for running the industry, it is part of plant and machinery and the provisions of Haryana VAT Act and Rules there under provide for purchase of Diesel Generating Set by a manufacturing unit at concessional rate of tax against form VAT D-1.

Further overall scheme of the Haryana VAT Act and Rules there under provides for availing input tax credit by a manufacturing unit in respect of tax paid on purchases of such diesel generating set and in that respect a diesel generating set is a part of plant and machinery. However, for the purpose of rate of tax in general, a Diesel Generating Set is an unclassified item and attracts VAT @ 12.5%.”

9. Subsequent thereto in Suzuki Powertrain India Limited, Gurgaon' s case (supra), even the Tribunal accepted the appeal of the assessee on similar issue and referring to the clarification issued by the department in the case of M/s Bhaskar Gensets Private Limited, Gurgaon, the appeal was accepted and the assessee was held entitled to input tax credit of the tax paid on purchase of cables, batteries, generator parts and circulatory fans (for generator). It was further opined therein that entry at Sr. No. 5 in Schedule-E of the Haryana VAT Act applies in cases of dealers engaged in the business of generation and distribution of power i.e. sale of power.

10. Another fact which is not in dispute is that the aforesaid order passed by the Tribunal has attained finality as the same was in terms of the clarification issued by the State itself.

11. Considering the fact that the State itself issued clarification in the case of M/s Bhaskar Gensets Private Limited, Gurgaon, clarifying the legal issue in favour of the appellant and subsequent thereto even the Tribunal has accepted the appeal in the case of other assessee, we do not find any reason to decline the same relief to the appellant. Hence, the present appeals are allowed. The substantial question of law is answered in

negative. The Tribunal was not justified in declining the relief of input tax credit to the appellant of the tax paid on purchase of diesel set for generating power for running the plant and machinery for production of goods, as the same is available in terms of the clarification issued by the department itself.

(Rajesh Bindal)
Judge

12.7.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No