IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 13 of 2017
Date of decision: 23.05.2018

M/s Camco Multi Metal Limited, Faridabad through its Authorised Representative, Sampurna Nand Pathak S/o Late Sh. Swami Nath, Age-45 years, Khasra No. 72/16/1, Krishna Colony, Near Shree Jee Dharma Kanta, Faridabad, R/o 971, Sector 55, Faridabad.

……Appellant

Vs.

State of Haryana through its Financial Commissioner 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 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 03.06.2013, 01.10.2014 and 14.12.2016, Annexures A.1, A.2 and Annexure A.4 respectively in S.T.A. No.1117 of 2014-15, 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 be complied with?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee 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 appellant 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 03.06.2013, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the first appellate authority i.e. Joint Excise and Taxation Commissioner (Appeals), [in short, "JETC(A)"]. Vide order dated 01.10.2014, Annexure A.2, 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 the case of ***M/s Whirlpool of India Limited, Faridabad*** and the order of the Tribunal dated 11.11.2011 rejecting the claim of the assessee 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 appeal by the appellant-assessee

3. We have heard learned counsel for the parties.

4. The Tribunal while adjudicating the issue had noticed that the assessee had claimed that the issue was covered in its favour by the

judgment of the Delhi High Court in ***Jagriti Plastics Limited Vs. Commissioner of Trade and Taxes*** (2015) 52 PHT 164. However, in view of the earlier decision of the Tribunal in ***M/s Enkay (India) Rubber Co. Private Limited Vs. The State of Haryana,*** STA No. 50 of 2011-12 decided on 11.11.2011, the same was adjudicated against the assessee. It was not disputed that VATAP No. 71 of 2012 had been filed in this Court against the order of the Tribunal dated 11.11.2011.

5. 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 appeal is remitted to the Tribunal to decide afresh by passing speaking order after hearing the parties in accordance with law. Ordered accordingly. The appeal stands disposed of in the manner indicated above.

(Ajay Kumar Mittal)
Acting Chief Justice

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

Whether speaking/reasoned Yes/No
Whether reportable Yes/No