

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

**VATAP No. 182 of 2017 (O&M)
Date of decision: 20.11.2018**

**Excise and Taxation Commissioner, Haryana through Excise and Taxation
Officer-cum-Assessing Authority, Panipat.**

.....Appellant

Vs.

M/s Mittal Processors Private Limited, G.T. Road, Siwah, Panipat and other

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Ms. Mamta Singla Talwar, DAG, Haryana for the appellant.

Ajay Kumar Mittal,J

1. This order shall dispose of a bunch of 66 appeals bearing VATAP Nos. 182, 189 of 2017, 183, 184, 185, 186, 159, 160, 194, 187, 188, 189, 167, 168, 169, 170, 171, 155, 156, 157, 198, 199, 200, 181, 182, 190, 191, 197, 195, 126, 127, 128, 129, 193, 192, 172, 173, 174, 175, 138, 139, 140, 141, 142, 143, 144, 145, 146, 218, 219, 256, 108, 109, 110, 111, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294 and 295 of 2018, as according to the learned counsel for the parties, the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No. 182 of 2017.

2. VATAP No. 182 of 2017 has been filed by the appellant-revenue under Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, “the HVAT Act”) against the order dated 17.03.2017, Annexure A.3 passed by the Haryana Tax Tribunal, (in short, “the Tribunal”) in STA No. 96 of 2013-14, claiming following substantial questions of law:-

“(a)Whether the Haryana Tax Tribunal being a statutory authority under Haryana Value Added Tax Act, 2003 was justified in holding that the principal of law laid down in present cases shall operate prospectively despite the fact that there is no such provision in HVAT Act, 2003 to this effect?

(b)Whether the Haryana Tax Tribunal being a statutory authority was justified in restricting the power of revenue authorities vested in them under Sections 15 and 17 of the Act *ibid* to a levy which has been held valid and legal by the Haryana Tax Tribunal itself?

(c)Whether the Haryana Tax Tribunal was justified in restricting the power of Revisional Authority when Section 34 of Haryana Value Added Tax Act, 2003 provides revision in the light of an order of the Haryana Tax Tribunal in similar case?”

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No. 182 of 2017 may be noticed. M/s Mittal Processors Private Limited-respondent No.1 is a dealer registered under the HVAT Act with the Excise and Taxation Department, Haryana at Panipat. The Excise and Taxation Officer-cum-Assessing Officer Authority, framed scrutiny assessment of respondent No.1- company under Section 15(3) of the HVAT Act as well as under the Central Sales Tax Act, 1956 (in short, "the CST Act") vide order dated 30.03.2011, Annexure A.1, wherein additional demand of ₹ 5,77,968/- under the HVAT Act was created on account of levy of tax with interest on deemed sales of dyes, chemicals, consumable, machinery parts and packing materials involved in the job works of the third parties. Aggrieved by the order, the respondent-dealer filed an appeal before the first appellate authority i.e. Joint Excise and Taxation Commissioner (Appeals), Rohtak but the same was rejected on 5.3.2013 being devoid of merit. The respondent-company filed appeal before the Tribunal under Section 33 of the HVAT Act which was dismissed by the Tribunal vide order dated 17.3.2017, Annexure A.3 holding that all materials used in the job work/work

contract by the respondent are taxable because entire inherent property thereof including that of all chemicals, dyes and colours get transferred to the fabrics. The Tribunal also made it clear that the principle of law laid down in the present cases shall operate prospectively only and the orders already passed by the authorities below by levying tax on lesser quantity of chemicals, dyes and colours or by levying no tax at all on the chemicals shall not be reopened by revision or otherwise. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the appellant-revenue.

5. Learned state counsel argued that once the legal issue was adjudicated by the Tribunal in favour of the revenue, there was no justification in holding it to be prospective in nature as no such direction could be issued by the Tribunal in the absence of any statutory provision under the HVAT Act.

6. It may be noticed that this Court in VATAP No.32 of 2017 (*M/s AP Processors, Plot No.103, Sector 24, Faridabad through its partner Shri Arvind Jain vs. State of Haryana through Principal Secretary to Government of Haryana, Excise and Taxation Department, Civil Secretariat, Haryana, Chandigarh*), decided on 17.5.2018 has already settled the legal issue against the appellant-revenue. Therein, after considering the relevant statutory provisions and the entire case law on the point, it has been concluded that the chemicals used in the job work are taxable but the pertinent question to be answered would be as to how much of dyes/colours are taxable which is transferred to the fabric when the whole quantity of consumable is not transferred. It has also been held that while determining the actual loss of chemicals, dyes and colours where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where parties can produce evidence in respect of their respective claims/contentions. Accordingly, the impugned orders

passed by the authorities therein were set aside and the matters were remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes and colours that would get washed out in the process of dyeing and printing of fabrics undertaken by the applicant. The operative paras of the judgment read thus:-

"26. Having arrived at the conclusion that chemicals used in the job work are taxable but the pertinent question to be answered would be as to how much of dyes/colours are taxable which is transferred to the fabric when the whole quantity of consumable is not transferred. In the present case, it would be essential to determine the value of consumables transferred in the goods on which tax is leviable. While determining the actual loss of chemicals, dyes and colours where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where parties can produce evidence in respect of their respective claims/contentions.

27. In the light of legal position enunciated hereinabove, the substantial questions of law as claimed are answered accordingly and the impugned orders passed by the authorities are hereby set aside. The matter is remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes and colours that would get washed out in the process of dyeing and printing of fabrics undertaken by the appellant. The Assessing Officer would conduct a factual enquiry in this regard after giving liberty to the parties to produce evidence in respect of their respective contentions. Thereafter, he would be at liberty to proceed in the matter for adding the percentage of chemicals, dyes and colours in the value of the turnover which are retained or embedded on the textile or fabrics, as the case may be in accordance with law. The Assessing Officer shall do so after examining the relevant statutory provisions and the case law on the point as noticed hereinabove. All the appeals stand disposed of accordingly."

7. In the light of the above, since the issue has been decided against the revenue, at this stage, a prayer was made by the learned counsel for the appellant-

revenue that as the appellant-revenue is in the process of challenging the judgment in *M/s A.P.Processors's case* (supra) before the Apex Court, liberty be granted to revive the appeals in case the judgment in the said case is varied or some contrary order is passed by the Supreme Court. It is clarified that in case the judgment in *M/s AP Processors's* case (supra) is varied or any order is passed against the said judgment in appeal, the appellant-revenue would be at liberty to revive the order passed in the present cases. The present appeals are, however, dismissed. In view of the dismissal of the appeals, the applications for condonation of delay in filing the appeals are left open.

(Ajay Kumar Mittal)
Judge

November 20, 2018
‘gs’

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes