IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 26 of 2018 (O&M)
Date of decision: 18.04.2018

M/s Aggarwal Marble, Panchkula

……Appellant

Vs.s

State of Haryana and Ors.

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Piyush Bansal, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

CM-4460-2018

This is an application under Section 149 CPC for making good the deficiency in Court fee, in view of the facts and circumstances mentioned in the application.

Allowed as prayed for, CM stands disposed of.

VATAP No. 26 of 2018

1. This appeal has been preferred by the appellant-assessee under Section 36 of Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 07.09.2017, Annexure P.5, passed by the Haryana Tax Tribunal Chandigarh, (in short, "the Tribunal"), in Appeal No.129 of 2014-2015, claiming following substantial questions of law:-

(i) "Whether on facts and circumstances of the case, the Ld. Authorities' finding regarding stock valuation is contrary to record?

(ii) Whether the finding of the authorities below is contrary to the record regarding the methodology for arriving on the valuation of the stock?

(iii) Whether the finding of the authority below is perverse as not based on the record produced by the parties?

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 partnership firm and is registered with the Registrar of Firms. It is based at Panchkula. It is engaged in the business of selling and trading marble stones. On 01.06.2012, a surprise inspection was conducted on the premises of the appellant-assessee firm. During the course of inspection, certain account books and documents were taken into possession for verification. This stock taking was done and inventory was prepared. Vide order dated 22.02.2013, Annexure A.1, the assessing authority while framing the assessment directed the appellant-assessee to deposit tax of ₹ 4,29,671/- levied in the shape of penalty slab @ 30%. Aggrieved by the order, the assessee filed an appeal before the Joint Excise and Taxation Commissioner (Appeals), Ambala. Vide order dated 18.02.2014, Annexure A.2, the appeal was dismissed and the order passed by the assessing authority was upheld. Still not satisfied, the assessee filed an appeal before the Tribunal. Vide order dated 07.09.2017, Annexure A.5, the appeal was dismissed by the Tribunal. Hence, the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant-assessee.

4. Admittedly, premises of the appellant-assessee were inspected on 01.06.2012. Excess stock was found during the inspection. Vide order dated

22.02.2013, Annexure A.1, the assessing authority levied tax on the excess stock and penalty under Section 36 of the HVAT Act. In the first appeal filed by the appellant against the order passed by the assessing authority, it was pleaded that no proper rebate on the sale value/MRP was allowed and that the value of the goods was also taken on higher side. It was recorded that 30% rebate/discount was allowed by the assessing authority from the total value of the stock which was taken at the time of counting the goods physically. It was further recorded that 15 to 20% discount was allowed on the MRP, whereas in the present case discount upto 30% had been allowed while determining the value of stock. The assessee was held to be not maintaining the account books in the normal course of business. Consequently, the order passed by the assessing authority was upheld and the appeal filed by the assessee was rejected. Vide order dated 07.09.2017, Annexure A.5 passed in the second appeal filed by the assessee before the Tribunal, it has been categorically recorded that the invoices relied upon by the assessee itself belied the claim of 40% discount on MRP. It was recorded by the Tribunal that tax, freight and transit issuance charges had been added to the base figure and therefore the discount came to 30% or even less on MRP. Besides it, profit margin and other expenses of the assessee also had to be added to the purchase price to arrive at the sale price on which tax was leviable. Thus, discount of 30% on MRP was held to be justified. The relevant findings recorded by the Tribunal read thus:-

> "We have carefully considered the matter. The contention on behalf of the appellant is completely fallacious and misconceived. Invoices relied on by the appellant itself belie the aforesaid claim of 40% discount on MRP. Counsel for the appellant has taken the base figure of purchase price after discount to show that the rebate is of 40%. However, that base figure is not the actual purchase

price of the assessee. To the said base figure is added tax, freight and transit issuance charges. After adding the same, the discount comes to 30% or even less on MRP. Besides it, profit margin and other expenses of the assessee also have to be added to the purchase price to arrive at the sale price on which tax is leviable. Thus, examined from any angle, discount of 30% on MRP cannot be said to be on lower side by any means. The said discount appears to be rather on the higher side to the advantage of the assessee-appellant. Accordingly, we find no merit in the aforesaid contention of counsel for the appellant.

Resultantly, the appeal is dismissed being devoid of merit."

5. Learned counsel for the appellant has not been able to point out any error or illegality in the findings recorded by the Tribunal warranting interference by this Court. Thus, no substantial question of law arises and consequently, the appeal stands dismissed. In view of the dismissal of the main appeal, C.M. Nos. 4461 and 4462-CII of 2018 are also dismissed.

(Ajay Kumar Mittal)
Judge

April 18, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**