IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VAT Appeal No. 73 of 2019 (O&M)
Date of Decision: 23.09.2019

M/s. Kaithal Solvent Pvt. Ltd., Cheeka, District Kaithal
through its Director Sh. Chhaju Ram

.... Appellant

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Rishab Singla, Advocate
for the appellant.

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JASWANT SINGH, J.

1. The appellant, a Private Limited Company, has filed the present appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (for short HVAT Act) against the order dated 03.10.2018 **(Annexure A-5)** passed by the Haryana Tax Tribunal, Chandigarh (for short the Tribunal) raising the following questions of law:-

> " (i) Whether in the facts and circumstances of the case, the Ld. Haryana Tax Tribunal was justified in upholding the order of revisional authority where there is no impropriety or illegality in the assessment order?
>
> (ii) Whether in the facts and circumstances of the case, the opening and closing stock of rice bran, rice bran oil and rice bran de-oiled cake and purchases of machinery will be included in the gross turnover while reversing Input Tax Credit on prorata basis as per the provisions of Haryana VAT Act even though no formula has been provided?

(iii) Whether any ambiguity in the Act is required to be resolved in the favour of subject and against the State.

2. Facts in brief are that the appellant-Private Company having a plant at Cheeka (Kaithal), is a registered dealer under the HVAT Act and is engaged in the business of manufacturing of Rice Bran and Sunflower Oil and de-oiled cakes. The Assessing Authority, Kaithal, vide order dated 19.09.2012 **(Annexure A-1)** framed the assessment under Section 15(3) of HVAT Act for the Assessment Year 2010-11. The Revisional Authority issued a Notice dated 01.07.2015 under Section 34 of HVAT Act read with Section 9(2) of the CST Act, 1956 seeking the reversal of the Input Tax Credit (ITC) availed on the sale of tax free goods.

Upon consideration of the reply, a revisional order dated 11.08.2015 **(Annexure A-3)** was passed, whereby an Additional Demand was made to the tune of ₹ 1,54,606/-.

3. The Assessee carried the matter in appeal before the Tribunal, which vide impugned order dated 03.10.2018 **(A-5)** upheld the order passed by the Revisional Authority. The operative portion of the findings read as under:-

“ Counsel for the appellant fairly submitted that the aforesaid issue is covered against the assessee by order dated 03.04.2018 of the Tribunal in appeals STA 206-207 of 2015-16 M/s Cheeka Solvent Pvt. Ltd., Cheeka, Kaithal V/s State of Haryana. However, counsel for the appellant contended that ITC on opening stock as taken into consideration by the Assessing Authority should not have been taken into consideration by the Revisional Authority and lesser amount of ITC should have been reversed. We have carefully considered the matter. ITC on opening

> *stock taken into consideration by the Assessing Authority cannot be challenged in the present appeal nor it could be challenged in the revisional proceedings. The same could be challenged by filing first appeal. So far as the formula adopted by Revisional Authority for proportionate reversal of ITC on sale of tax free goods (DOCs) is concerned, the same has been upheld by the Tribunal in case of M/s Cheeka Solvent Pvt. Ltd. (supra).*
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> *For the reasons aforesaid, we find no merit in the present appeal which is accordingly dismissed. "*

4. After hearing counsel for the appellant, we are not inclined to invoke jurisdiction on the ground that amount involved is only ₹ 1,54,606/-, hence, the **appeal** is **dismissed**, however, substantial questions of law raised are left open.

(JASWANT SINGH)
JUDGE

September 23, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*