IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

VATAP No.268 of 2018(O&M)

Date of Decision:-06.12.2019

M/s Bhatinda Stone Crusher.

......Appellant.

Versus

State of Haryana & Ors.

......Respondents.

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

Present:- Mr. Malkiat Singh, Advocate for the Appellant.

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JASWANT SINGH, J.

1. The Appellant-Partnership firm through instant Appeal under Section 36 of Haryana Value Added Tax Act, 2003 (for short 'VAT Act') is seeking quashing of order dated 3.4.2019 passed by VAT Tribunal which has dismissed appeal of the Appellant.

2. The Appellant is engaged in manufacturing, sale and purchase of building material i.e. Rori, Bajri, Sand etc. The Appellant as required under Central Sales Tax Act, 1956 submitted form 'C' obtained from buyers where sale in the course of inter-state was made at concessional rate of tax. The Respondent rejected one C form of buyer namely Pawan Trading Company on the ground that single form was submitted for transaction of whole year 2008-09. The form was accepted qua transaction of one quarter

but rejected for remaining part of the year. The Respondent vide order dated 11.10.12 (**Annexure A-2**) created demand of ` 2,09,949/- and Appellant unsuccessfully assailed aforesaid order before 1st Appellate Authority as well Tribunal.

3. Counsel for the Appellant contended that in view of judgment of Calcutta High Court in the case of **Cipla Ltd. vs Deputy Commissioner, Commercial Tax, Corporate Division and others <u>2013 61 VST 445 (Cal</u>)** single declaration form may cover transactions made during more than one month and there is nothing in Rules which can be construed to vitiate a declaration form only on the ground that it covers transactions exceeding a period of one month. Thus, C Form submitted for the whole year 2008-09 cannot be rejected on the ground that it covers more than one quarter of the year.

4. Tribunal while rejecting appeal recorded its findings in below extracted Para:

> " We have carefully considered the matter. According to rule 12(1) of the Rules, declaration form C has to be furnished to claim benefit of concessional tax rate under section 8(4) of the CST Act. Second proviso to rule 12(1) of the Rules is only an enabling provision for the assessee. By this provision, assessee has been given option to furnish a single declaration form C for all the transactions of one quarter. In the absence of this enabling provision in the second proviso to Rule 12(1) of the Rules, the assessee would have been required to furnish a separate form C for each transaction. Thus the word 'may' has been used in the aforesaid provision to enable the assessee to furnish single form C for many transactions of a single quarter and in absence of that provision, a separate C form would be required for each transaction. Similar provision of first

proviso to rule 12(5) of the Rules has already been interpreted by the Tribunal vide order dated 28.02.2019 in appeal STA 209 of 2017-18 M/s Sunil Kumar Vakil Kumar, Tohana V/s State of Haryana in favour of the State. In that case, judgment of Calcutta High Court in the case of Cipla Ltd. (Supra) was also considered. Judgment of Madras High Court in the case of Hewlett Packard India Sales Pvt. Ltd. (supra) is on a different point. In that case, the date of delivery of the goods was in next quarter whereas the date of dispatch of the goods was in the preceding quarter. In this context, it was held that if the assessee took date of delivery as date of transaction, there was nothing wrong in it and, therefore, single C form covering transactions of one quarter, in which delivery of goods was made, was legal and valid. Consequently, the said case was on completely different facts. The case of M/s Crucible Sales Agency (supra) is, of course, in favour of the assessee on this issue. However, we will like to follow our own case decision in the case of M/s Sunil Kumar Vakil Kumar (supra). The appeal, therefore, deserves to be dismissed.

However, keeping in view all the facts and circumstances of the case, we are of the considered opinion that the Authorities below should have given another opportunity to the assessee to furnish separate C forms for the transactions of the remaining three quarters, as also now prayed for by counsel for the appellant. Consequently, impugned orders of the Authorities below are liable to be modified to his extent.

Resultantly, this appeal is dismissed except that the case is remanded to the Assessing Authority for the limited purpose of giving reasonable opportunity to the assessee for furnishing a separate C form for each of the remaining three quarters and for passing approximate order in accordance with law regarding the same after examining and verifying the same.

5. Having scrutinized record of the case and heard counsel for the

Appellant, we find that present appeal is bereft of merits and deserves to be dismissed. We do not find any infirmity in the impugned order passed by Tribunal. The Tribunal has correctly interpreted scheme of the Act and denied benefit of single C Form for the entire year. Tribunal has considered judgment of Calcutta High Court in the case of Cipla Ltd. (Supra) which is basis of present appeal. Calcutta High Court has dealt with question of form 'F' whereas present matter relates to form 'C' and provisions relating to both forms are not identical, thus we do not find any perversity in the findings recorded by Tribunal and accordingly **dismissed** present appeal.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

December 06, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*