IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.17885 of 2018(O&M)

Date of Decision:-21.11.2019

M/s Gold Laminates (India) Ltd., Sabapur.

......Petitioner.

Versus

State of Haryana & Anr.

......Respondents.

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

Present:- Mr. Sandeep Goyal, Advocate for Petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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JASWANT SINGH, J.

1. The Petitioner-Limited Company has filed present petition under Article 226 of the Constitution of India seeking quashing of letter 29.6.2018 (**Annexure P-10**) whereby Respondent has turned down request of the Petitioner to permit cross examination of witnesses and further direction to Respondent to permit cross examination of buyer (wrongly mentioned as 'seller') of goods.

2. The facts emerging from record are that the Respondent vide assessment order dated 26.3.2015 framed assessment for the year 2010-11. The Assessing authority accepted 'C' forms, however issued notice dated 30.10.2017 calling upon the Petitioner to show cause as to why re-assessment should not be framed as audit party has raised objection with

respect to non-verification of 'C' form issued by M/s Paras Sales Corporation Delhi. As per letter dated 20.2.2017 of Assistant Commissioner, VAT, Delhi 'C' forms are bogus. The Petitioner requested Respondent to permit cross examination of proprietor of M/s Paras Sales. The Respondent acceding request of Petitioner supplied copy of report of Assistant Commissioner, VAT, New Delhi, however vide impugned letter dated 29.6.2018 declined request of the Petitioner to allow cross examination of buyer and Assistant Commissioner, New Delhi and directed to appear on 9.7.2018.

3. Counsel for the Petitioner contended that as per judgment of Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs Commissioner of Central Excise <u>(2016) 15 Supreme Court Cases 785</u>** it has been held that denial of cross examination amounts to violation of principles of natural justice, thus Respondent is bound to grant opportunity of cross examination.

4. Ld. Deputy Advocate General, Haryana submitted that 'C' forms were found ingenuine on verification and competent authority has confirmed in writing. Entire case is based upon record, thus there is no need of cross examination.

5. This court while issuing notice on 31.7.2018 passed order as below:

> " Contends that the petitioner would have a right to summon the record and the officer/person in whose custody it is for the purposes of establishing his claim before the Assessing Authority. He would have a right to cross-examine such a person. Relies on Andaman Timber Industries v. Commissioner of Central Excise, Kilkata-II, (2016) 15 Supreme Court Cases 785, in particular para 6, which is extracted

herebelow:

> "6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."
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> Notice of motion for 30.10.2018.
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> In the meantime, the proceedings may go on but the final order be not passed. It shall be the responsibility of the petitioner to serve the respondents. "

6. Ld. State Counsel could not point out any valid reason for denial of cross examination and failed to distinguish application of ratio of above-cited judgment of Apex Court to the case in hand. Hon'ble Supreme Court has categorically held that not allowing the assessee to cross-examine witnesses is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice. In the present case,

the Petitioner sold goods to M/s Para Sales Corporation who supplied four C forms and as per Respondent these are ingenuine. The Petitioner is seeking cross of only buyer of goods to elicit the circumstances under which he had supplied the said Form 'C' to the petitioner-Assessee and it cannot be called as ploy to delay the adjudication, thus no harm is going to cause to Respondent if Petitioner is permitted to cross-examine buyer of goods. No doubt it is record based case, nonetheless in the interest of natural justice the Petitioner is justified while seeking cross of buyer who had supplied 'C' Form and got benefit of concessional rate of tax. In view of judgment of Hon'ble Supreme Court in the case of **Andaman Timber (Supra),** present petition deserves to be allowed and accordingly allowed. The Respondent is hereby directed to summon Proprietor/partner of M/s Paras Sales Corporation, New Delhi alongwith record and allow Petitioner to cross examine him. The Petitioner shall supply complete address of M/s Paras Sales Corporation, if found necessary by Assessing Authority. The Petitioner at the first instance is directed to appear before Assessing Authority on 3.2.2020 and thereafter as and when required by Assessing Authority.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

November 21, 2019
Vinay

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