IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-160-2017

Date of Decision: 11.1.2019

M/s Steel Mongers India P. Ltd., Faridabad

....Appellant.

Versus

State of Haryana and others

...Respondents.

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

PRESENT: Mr. Balwinder Singh, Advocate for
Mr. Rajiv Agnihotri, Advocate for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos.160 and 173 of 2017 as according to learned counsel for the parties, the facts and issues involved therein are identical. For brevity, the facts are being extracted from VATAP-160-2017.

2. VATAP-160-2017 has been filed by the dealer under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 7.12.2011 (Annexure A-1), dated 3.2.2014 (Annexure A-2) and dated 21.12.2016 (Annexure A-4) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 412 to 414 of 2014-15, for the assessment years 2004-05 to 2007-08, respectively, claiming the following substantial questions of law:-

i) Whether in the facts and circumstances of the case, Tribunal has not erred in disallowing the plea of the appellant for providing time for production of statutory declaration forms which are in possession of the appellant?

ii) Whether in the facts and circumstances of the case, Tribunal has not erred going against the settled law that the declaration forms can be produced at any stage?

iii) Whether in the facts and circumstances of the case, Tribunal has not erred making an observation that the amount of declaration forms in the possession of appellant before the first appellate authority and it should have sought time from the first appellate authority for further production of such declaration and in the absence of such prayer such plea cannot be taken before the Tribunal?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. For the assessment year 2005-06, the appellant was assessed to tax in remand proceedings by the Assessing Authority vide order dated 7.12.2011 (Annexure A-1). Additional demand under the Sales Tax Act, 1956 was created in the absence of declaration. Feeling aggrieved, the appellant filed an appeal before respondent No.4. Respondent No.4 vide order dated 3.2.2014 (Annexure A-2), affirmed the order of the Assessing Authority and dismissed the appeal. Still dissatisfied, the appellant filed an appeal on 7.6.2014 (Annexure A-3)

before the Tribunal who vide order dated 21.12.2016 (Annexure A-4) rejected the appeal holding that the appellant had not produced regular books, tax invoices and VAT C-4. Hence, the present appeals.

4. The short ground raised by learned counsel for the appellant is that the statutory declaration forms could not be produced at the appropriate stage. Now, the appellant is in possession of the statutory declaration forms, which can be produced before the Assessing Authority, if opportunity is granted so as to file the same. In support of his arguments, learned counsel for the appellant has placed reliance upon a Division Bench judgment of this Court in **Prestolite of India Limited v. State of Haryana, (1988) 70 STC198**.

5. Learned counsel for the State, on the other hand, submitted that the appellant had failed to produce the statutory declaration forms at the appropriate stage during the assessment proceedings and even failed to produce the same during pendency of the appeal, hence, it should not be granted further opportunity for the same.

6. After hearing learned counsel for the parties and considering the fact that this Court in **Prestolite of India's case (supra)** has held that the assessee can file declaration forms at any stage of the proceedings including during pendency of the appeal and the object of production of such statutory declaration forms is only levy of tax at concessional rate. The benefit would be available to an assessee only if the genuineness of the statutory declaration forms issued by the seller of goods is verified by the Department. Hence, there cannot be any question of fabrication of any documents at this stage.

7. Considering the aforesaid fact, we are of the considered view

that one opportunity deserves to be granted to the appellant to produce the statutory declaration forms before the Assessing Authority. For that purpose, the appellant may appear before the concerned Assessing Authority on 27.2.2019 or any other date fixed by the Assessing Authority.

8. Accordingly, the impugned order dated 21.12.2016 (Annexure A-4) passed by the Tribunal is modified to the extent mentioned above. It is, however, made clear that in case of failure by the appellant to produce the statutory declaration forms in its possession, on the date so fixed, no further opportunity shall be granted to the appellant for the purpose.

9. The appeals are disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

January 11, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**