IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 237 of 2018 (O&M)
Date of decision: 01.05.2019

Excise and Taxation Commissioner, Haryana through Excise and Taxation Officer-cum-Assessing Authority, Faridabad (East)

……Appellant

Vs.

M/s Sukriti Prints, 19-A DLF Indl. Area Phase-I, Faridabad and another

…..Respondents

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

Present: Ms. Mamta Singla Talwar, DAG, Haryana for the appellant-revenue.

Ajay Kumar Mittal,J

1. The appellant-revenue has filed the instant appeal under Section 9(2) of the Central Sales Tax Act, 1956 (in short, "the CST Act") read with Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 17.03.2017, Annexure A.3 passed by the Haryana Tax Tribunal, (in short, "the Tribunal") in STA No. 128 of 2014-15, claiming following substantial questions of law:-

"(a) Whether the Haryana Tax Tribunal being a statutory authority under Haryana Value Added Tax Act, 2003 was justified in holding that the principal of law laid down in present cases shall operate prospectively despite the fact that there is no such provision in HVAT Act, 2003 to this effect?

(b) Whether the Haryana Tax Tribunal being a statutory authority was justified in restricting the power of revenue authorities vested in them under Sections 15 and 17 of the Act ibid to a levy which has been held valid and legal by the Haryana Tax Tribunal itself?

(c) Whether the Haryana Tax Tribunal was justified in restricting the power of Revisional Authority when Section 34 of Haryana Value Added Tax Act, 2003 provides revision in the light of an order of the Haryana Tax Tribunal in similar case?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. M/s Sukriti Prints, Faridabad-respondent No.1 is a dealer registered under the HVAT Act with the Excise and Taxation Department, Haryana at Faridabad. The Excise and Taxation Officer-cum-Assessing Officer Authority, framed scrutiny assessment of respondent No.1- company under Section 15(3) of the HVAT Act as well as under the CST Act vide order dated 30.12.2008, Annexure A.1, wherein additional demand of ₹ 5,09,568/- was created on account of levy of tax with interest on deemed sales of dyes, chemicals, consumable, machinery parts and packing materials involved in the job works of the third parties. Aggrieved by the order, the respondent-dealer filed an appeal before the first appellate authority i.e. Joint Excise and Taxation Commissioner (Appeals), Faridabad but the same was rejected on 28.01.2014, Annexure A.2 being devoid of merit. The respondent-company filed appeal before the Tribunal under Section 33 of the HVAT Act which was dismissed by the Tribunal vide order dated 17.3.2017, Annexure A.3 holding that all materials used in the job work/work contract by the respondents are taxable because entire inherent property thereof including that of all chemicals, dyes and colours get transferred to

the fabrics. The Tribunal also made it clear that the principle of law laid down in the present cases shall operate prospectively only and the orders already passed by the authorities below by levying tax on lesser quantity of chemicals, dyes and colours or by levying no tax at all on the chemicals shall not be reopened by revision or otherwise. Hence the instant appeal by the revenue.

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

4. It is not disputed by the learned counsel for the appellant-revenue that the issue involved in the present appeal stands concluded against the revenue by a recent judgment of this Court in ***Excise and Taxation Commissioner, Haryana through Excise and Taxation Officer-cum-Assessing Authority, Panipat Vs. M/s Mittal Processors Private Limited, G.T. Road, Siwah, Panipat and other***, VATAP No. 182 of 2017 delivered on 20.11.2018, wherein after considering the relevant statutory provisions and the entire case law on the point, it has been concluded that the chemicals used in the job work are taxable but the pertinent question to be answered would be as to how much of dyes/colours are taxable which is transferred to the fabric when the whole quantity of consumable is not transferred. It has also been held that while determining the actual loss of chemicals, dyes and colours where the fabric or textile undergoes various processes depends upon factual aspect which can be considered only by the Assessing Officer where parties can produce evidence in respect of their respective claims/contentions. Accordingly, the impugned orders passed by the authorities therein were set aside and the matters were remanded to the Assessing Officer to work out the details of quantity of chemicals, dyes and colours that would get

washed out in the process of dyeing and printing of fabrics undertaken by the applicant.

5. In view of the above, the present appeal is dismissed in terms of the judgment passed in ***M/s Mittal Processors Private Limited's*** case (supra). In view of the dismissal of the appeal, the application for condonation of delay in filing the appeal is left open.

(Ajay Kumar Mittal)
Judge

May 01, 2019 **(Manjari Nehru Kaul)**
'gs' **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No