104 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8723-2015(O&M)
Date of decision: 25.08.2022

M/s Indian Oil Corporation Limited
.... Petitioner

Versus

M/s Paliwal Fibers Pvt. Ltd. & anr.
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Kapoor, Advocate
for the petitioner.

Mr. Raghav Goyal, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

The suit filed by the petitioner for recovery of Rs.14,24,980/- is pending before the trial Court. During the pendency of the suit, an application filed by the plaintiff for direction to amend the plaint has been dismissed by the trial Court. By way of an amendment, the plaintiff wishes to add para 8(A) in the plaint, which reads as under:-

> "8A. That on 14.03.2007 Sh. H.S. Channi, ETO cum assessing Authority Ambala passed the assessment order for the year 2002-2003 pertaining to the erstwhile IBP Company Ltd. but Sh. Ashok Yadav D.E.T.C. cum Revisional authority Haryana vide its order dated 10.12.2007 hold that the dealer company became liable to pay interest u/s 25(5) and penalty u/s 47 of Haryana General Sales Tax Act, 1973 and it was also hold by the revisional authority that the deduction u/s 27 of the Act on account of sale to exempted units of hsd after 27.01.2003 (w.e.f. the date of notification no.S.O.13/H.A.20/73/S15/2003

dated 27.01.2003) have wrongly been allowed by assessing authority. The exempted units were not entitled to purchase HSD on concessional rate after 27.01.2003. Hence the deduction on account of sale of HSD after 27.01.2003 amounting to Rs.3349267/- to exempted units needs to be disallowed and be taxed @ 12%. Similarly, another order for the year 2003-04 i.e. order dated 2003.2007 passed by Sh. H.S. Channi ETO cum assessing Authority Ambala and thereafter order dated 30.11.2007 passed by Sh. Ashok Yadav, DETC cum Revisional Authority Haryana was also passed, in which it was held by the revisional authority that the sales of the commodity namely HSD is covered under Schedule-D appended to the VAT Act. In view of the provisions of the Section-7(2) (a) of the Act ibid, tax on the goods contained in schedule D is leviable at the rate mentioned against such goods as per schedule-A, Tax on HSD is leviable at the rate of 12% so tax on sale of HSD was leviable @ 12% by the dealer concerned and further it was also held that however there is special dispensation for purchase of goods without payment of tax in view of notification no.S.O.56/HA 6/2003/S7/2003 dated 07.04.2003 issued u/s 7(2) (b) by the units registered under the following schemes provided that the goods are purchased by them for the purpose of use in the manufacture of goods for sale in the course of export of the goods out of the territory of India and ultimately in the order dated 30.11.2007 it was held by the Revisional authority that the sales by the erstwhile IBP Company in the year 2003-04 could neither be assessed as

> exempted sale nor these could be taxed @ 4%. Rather these are taxable at 12% and the order dated 20.03.2007 passed by Assessing Authority Sh. H.S. Channi has been reversed and the tax was computed and was demanded to be deposited by the dealer company by the sale tax authority for the period from 01.04.2003 to 31.03.2004. The copies of above mentioned assessment orders are attached herewith."

Heard learned counsel representing the parties at length and with their able assistance perused the paper book.

Order VI Rule 2 of the Code of Civil Procedure, 1908, provides that the material facts are required to be stated in a concise form while filing the pleadings. It specifically provides that the evidence is not required to be made a part of the pleadings. On a careful reading of para 8A, it is evident that the assertions sought to be added, are subject matter of evidence as per the provisions of the Code of Civil Procedure, 1908, which is not required to be made a part of the pleadings.

Keeping in view the facts, the revision petition is disposed of with the observation that the plaintiff shall be permitted to lead evidence in accordance with law.

25.08.2022 **(ANIL KSHETARPAL)**
monika **JUDGE**

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