IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-77-2018
Date of Decision:05.05.2022

Haryana Financial Corporation

.......Appellant

Versus

State of Haryana and another ......Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Sandeep Goyal, Advocate for the appellant.

Ms. Shruti Jain Goyal, DAG, Haryana.

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TEJINDER SINGH DHINDSA J.

By a common order dated 29.08.2017, the Haryana Tax Tribunal disposed of three appeals i.e. STA Nos.180 of 2009-2010, 282 and 437 of 2010-2011 filed by the assessee-M/s Haryana Financial Corporation Panchkula for the assessment years 2004-05, 2005-06 and 2006-07 respectively.

The instant appeal under Section 36 of the Haryana Value Added Tax Act 2003 is against the order dated 29.08.2017 (Annexure A-8) passed by the Tribunal in STA No.180 of 2009-10 pertaining to the assessment year 2004-05.

A brief factual backdrop would be necessary.

Appellant herein is a Corporation established under the State Financial Corporation Act 1951 and the State of Haryana is a major stake holder in the Corporation. In the year 1993-94, the Corporation decided to start leasing activities providing for 100% finance of equipment(s) and giving the same on lease to industrial concerns on lease rental for a specified period under the State of Haryana. The ownership/title of the equipment continued to vest in the corporation and the same could be transferred in the name of the lessee after expiry of the lease period/adjustment of the lease amount. The lease agreements in question were executed not in the State of Haryana but at Chandigarh.

By way of illustration one of the lease agreements entered into on behalf of the appellant-corporation stands appended as Annexure A-1.

It so transpired that during the course of recovery from the assessee it was observed that a number of parties had not procured the equipment(s) and had misappropriated the funds released by the appellant-corporation. Resultantly, the lease assistance granted by the Corporation was recalled and the lease agreement executed with such defaulter lessees was terminated. In the year 2000, Corporation took a decision that in order to reduce defaults and accelerate recovery in the leasing portfolio, re-schedulement of payment and extension of currency of the agreement on a case to case basis be considered. It was also decided that if re-schedulement is to take place within the currency of the agreement, penal interest be charged and if such re-schedulement is beyond the currency of the agreement, the outstanding lease rental on the date of expiry of the currency be treated as term loan and interest equivalent to the prevalent term loan rate i.e. 16.5% be charged. Such decision came to be fructified by issuance of a circular dated 21.04.2000 at Annexure A-3. Furthermore, with a view to recover the dues in the leasing portfolio, the appellant-Corporation even floated a liberal Scheme of Settlement of Lease Amount dated 16.06.2003 (Annexure A-4) also termed as One Time Settlement Scheme.

For the assessment year 2004-05 Corporation filed its returns reflecting a gross turnover of Rs.2,70,343/- and deposited the requisite tax. Case of the appellant was taken up for scrutiny by the ETO-cum-Assessing Authority, Panchkula. The Assessing Authority pointed out that there is a difference of Rs.1,25,65,053/- in the returns furnished. The appellant-Corporation responded by taking a stand that such amount was recovered under the One Time Settlement Scheme following the capital recovery method by treating the lease rental as principal amount. On the residual value of machinery and vehicles recovered by it, the requisite VAT had been paid. The Assessing Authority, however, took a view that the liability to tax on lease rental would remain under all circumstances and further held that the taxable event had occurred the day, the lease agreement was executed and the same stand reflected as lease rental receipt in the annual return for the year 2004-05. The Assessing Authority accordingly held that lease rental is covered under the definition of sale under Section 2(1)(ze) of Haryana VAT Act 2003. Accordingly, additional demand of Rs.12,53,804/- was raised by the Assessing Authority vide order dated 14.03.2008 (Annexure A-5).

Appellant-Corporation then preferred an appeal before the Ist Appellate Authority i.e.JETC (Appeals), Ambala. The first Appellate Authority affirmed the order of the Assessing Authority vide order dated 10.04.2009 (Annexure A-6). Feeling aggrieved, appellant-Corporation, preferred an appeal before the Tribunal which stands rejected vide common impugned order dated 29.08.2017 (Annexure A-8).

Learned counsel has argued that the Assessing Authority had no jurisdiction to levy tax on lease money. Right to use is taxed because of the deeming definition of sale and in this regard the vital factor to be considered is the "Situs of Sale". It is only thereafter that the tax can be levied. It has vehemently been urged that head office of the appellant-Corporation is at Chandigarh and all the agreements are entered at the head office and as such the taxable event has not occurred in the State of Haryana.

It is asserted that as per settled law, tax cannot be levied in a state where 'situs of sale" is not there. It was then argued by counsel that the appellant had converted the amount of outstanding lease rentals into a loan amount which could have been settled under the One Time Settlement Scheme opted by the lessees. Since the amount had been recovered not as outstanding lease amount but as a recovery of loan amount, the same could not have been equated with the lease rentals on which tax could have been imposed. Based on such submissions counsel has formulated the following two substantial questions of law to be considered:-

> (i) Whether in the facts and circumstances of the case, the alleged lease rentals could be brought to tax under the Haryana VAT Act by State of Haryana even though agreements in this regard have been executed at Chandigarh and as such no tax could have been levied?
>
> (ii) whether in the facts and circumstances of the case, the learned Tribunal was justified in upholding the levy of tax by treating

the recovery of outstanding loan amount under One Time Settlement Scheme to be lease rentals?

We have heard counsel for the appellant-corporation as also learned State counsel at length.

We find that by virtue of the impugned common order dated 29.08.2017 (Annexure A-8), the Tribunal has held that the amount of lease recovered by the appellant is covered by the definition of sale irrespective of the fact whether it is recovered as lease money, rental, higher purchase instalments or by whatever name it be called. With regard to territorial jurisdiction the Tribunal has taken a view that the appellant is an assessee registered at Panchkula under the Haryana VAT Act and has also paid some voluntary tax at Panchkula. Since the equipment/machinery/vehicles were leased out in the State of Haryana, therefore Haryana is the 'situs of sale'. It has further been observed by the Tribunal that if the goods are located within the State at the time of use, the State shall be deemed to be the 'situs of sale' and as such rejected the argument that merely because head office of assessee is at Chandigarh and agreements were entered into at Chandigarh, it would deprive the authorities in Haryana to levy tax on the transactions which have taken place within the State. The Tribunal while taking such view has even referred to the judgment of the Hon'ble Supreme Court in ***20th Century Finance Corporation Ltd. And another vs. State of Mahrashtra (2000) 119 Sale Tax cases 182.***

We find that the question of law as culled out at serial No.(i) is no longer *res integra.* The issue would be covered by the judgment of the Apex Court in ***20th Century Finance Corporation Ltd. (supra)*** wherein it had been held as follows:-

> ***We, therefore, find that the location or delivery of goods within the State cannot be made a basis for levy of tax on sales of goods. Under general law, merely because the goods are located or delivery of which has been effected for use within the State would not be the situs of deemed sale for levy of tax if the transfer or right to use has taken place in another State. Therefore, the contention on behalf of the respondents that there would be no completed transfer of right to use goods till the goods are delivered is to prevail, then the respondents are further required to show that the contract of transfer of right to use goods is also entered into in the said State in which the goods are located or delivered for use. The State cannot levy a tax on the basis that one of the events in the chain of events has taken place within the State. The delivery of goods may be one of the elements of transfer of right to use, but the same would not be the condition precedent for a contract of transfer of right to use goods. Where a party has entered into a formal contract and the goods are available for delivery irrespective of the place where they are located, the situs of such would be where the property in goods passes, namely, where the contract is entered into.***

The Apex Court as such held that the taxable event of transfer of right to use any goods takes place at the place where the transaction is entered and not the place where the delivery or use takes place.

The same view has thereafter been reiterated by the Hon'ble

Supreme Court in ***Great Eastern Shipping Company Limited vs. State of Karnataka and others 2020 (3) SCC 354.***

It is the conceded factual premise at the hands of learned State counsel that the agreement(s) in question took place not in the State of Haryana but at Chandigarh. Under such circumstances the dictum laid down by the Apex Court in the case of ***20^{th} Century Finance Corporation Limited*** (supra) would squarely apply to the facts of the present case and in favour of the assessee i.e. the appellant-Corporation.

The question of law at serial no.(i) culled out hereinabove is as such answered in favour of the assessee.

We are constrained to observe that in such regard the Tribunal while passing the impugned order dated 29.08.2017 (Annexure A-8) has proceeded on a clear misreading of the judgment in ***20^{th} Century Finance Corporation Limited (supra).***

In view of our finding and conclusion on question No.1, the second question at (ii) would be of no consequence and as such the same is not being delved into.

For the reasons recorded above the instant appeal is allowed and the order dated 29.08.2017 (Annexure A-8) passed by the Tribunal in STA No.180 of 2009-2010 for the assessment year 2004-05 is set aside.

Appeal allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

05.05.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No