HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-10-2020 (O&M)
Date of decision: 30.01.2023

M/s. Jai Bajrang Polypack Pvt. Ltd. ....Appellant

V/s.

The State of Haryana and others .....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajiv Agnihotri, Advocate
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.
CM-276-CII-2020

For the reasons mentioned in the application, the same is allowed and the delay of 138 days in re-filing the appeal is condoned.

VATAP-10-2020

The appellant-assessee had come up an appeal bearing No. VATAP-134-2017 before this Court against the order dated 18.05.2017 (Annexure A-6) whereby review application filed by the appellant had been dismissed as time barred and vide order dated 12.11.2018 (Annexure A-8) passed in VATAP-134-2017, the matter was remitted back to the Tribunal for re-consideration after affording opportunity of hearing to both the parties.

Learned counsel for the appellant further submits that vide order dated 11.03.2019 (Annexure A-10), the Tribunal has again dismissed the review application by passing detailed order. A perusal of the order dated 11.03.2019 (Annexure A-10) shows that pursuant to order dated

12.11.2018, the Tribunal had again proceeded to examine as to how the review application was maintainable and the process of dispatching the impugned order by registered post.

(1)The Tribunal had observbed that the order dated 08.05.2014 was received by the State Authorities on 04.06.2014 and the said order was dispatched to the assessee through registered post vide postal receipt dated 29.05.2014. Hence, the review application filed on 20.01.2017 was hopelessly time barred.

(2) The Tribunal had further examined the declarant Mr. Rajesh Dutta, Advocate that they had never received order dated 08.05.2014 in the month of May, 2014 at their official address. This plea was also rejected. The Tribunal observed that the said declaration was only to the extent that the order was not received in the month of May, 2014 and not for the subsequent period or even for June, 2014. The Tribunal again dismissed the review application being time barred as the review application was filed on 20.01.2017.

Before this Court, the main question for consideration is whether the Tribunal was required to examine the law laid down by this Court in ***M/s. A.R. Plastics Pvt. Ltd., Gurgaon Road's case (supra)*** while examining the review application again pursuant to order dated 12.11.2018 (Annexure A-8).

The Tribunal had restricted itself only to the question of limitation and did not discuss the law laid down by the above-referred Division Bench judgment.

In the present case, the appellant M/s. Jai Bajrang Polypack Pvt. Ltd. is engaged in manufacturing and trading of HDPE/PP fabric etc.

and is registred with the Department of Sales Tax under the Haryana Value Added Tax Act, 2003 as also under the Central Sales Tax Act, 1956. The Tribunal, vide order dated 08.05.2014 (Annexure A-4) had dismissed the appeal filed by the appellant. In the said order, it was observed that the appeal was dismissed keeping in view the decision given by the Tribunal in the case of ***M/s. Rishab Farm Industries Jhajjar in STA No. 823 of 2009-10*** and in the case of ***M/s. Suraj Plastic Industries, Panipat in STA No. 984 of 2010-11***. Learned counsel for the appellant was not present when the said order was passed and, thereafter, his review application was dismissed twice.

The Tribunal dismissed the review application on 18.05.2017 (Annexure A-6) and again dismissed the review application on 11.03.2019 (Annexure A-10) pursuant to order dated 12.11.2018 (Annexure A-8) passed by this Court. The Tribunal, on both the occasions had not examined the issue on merits and only on the ground that the review application was barred by limitation, dismissed the review application.

In the order dated 12.11.2018 (Annexure A-8), reference was made to a judgment passed by the Division Bench of this Court in ***VATAP-134-2013*** titled as ***M/s. A.R.Plastics Pvt. Ltd. Gurgaon Road, Jhajjar vs. State of Haryana and others, decided on 14.05.2014.*** The Division Bench was examining the case of the appellant who was engaged in the business of manufacturing of High-Density Polyethylene/Polypropylene (for short 'HDPE/PP') woven fabric which fell within entry 51 of Schedule B of Haryana VAT Act, 2003 and was exempted from payment of tax.

After hearing learned counsel for the parties and going through the judgment passed in ***M/s. A.R.Plastics Pvt. Ltd. Gurgaon Road, Jhajjar's case (supra),*** the instal appeal is allowed. The impugned orders dated 26.03.2010 (Annexure A-1), dated 17.12.2010 (Annexure A-2), dated 08.05.2014 (Annexure A-4), 18.05.2017 (Annexure A-6) and 11.03.2019 (Annexure A-10) are set aside and the matter is remitted back to the authorities below to hear the appeal and pass an order on merits keeping in view the judgment passed by this Court in ***M/s. A.R. Plastics Pvt. Ltd., Gurgaon Road's case (supra).***

(RITU BAHRI)
JUDGE

30.01.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

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