IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 ***2023:PHHC:162751-DB***

CWP Nos.1588 and 1589 of 2018
Date of Decision: 19.12.2023

M/s. K.K. Kohli & Brothers P. Ltd., Faridabad now M/s. SRS 1-Tech Pvt. Ltd., Faridabad .....Petitioner(s)

Versus

State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Balwinder Singh, Advocate,
for Mr. Rajiv Agnihotri, Advocate,
for the petitioner.

Mr. Sharan Sethi, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J. (Oral)

1. The present order shall dispose of two writ petitions i.e. CWP Nos.1588 and 1589 of 2018 as both the writ petitions are directed against the order passed by the Haryana Tax Tribunal on 08.08.2017 in STA-726/2010-2011 (Annexure P-3 in CWP-1588-2018) and the order dated 30.08.2017 passed in STA-607/2012-13 (Annexure P-3 in CWP-1589-2018). The appeals were dismissed on the ground that they related to the taxability in the case of job work of processing and dyeing of cloth done by the assessee-appellant. Since the Tribunal had already decided the cases in ***STA Nos.96 and 97 of 2013-14, M/s. Mittal Processors, Panipat vs. State of Haryana*** on 17.03.2017 in the favour of the State, the two appeals were also dismissed in terms of the said order.

2. It is not disputed that vide the main order dated 17.03.2017, as many as 143 appeals were decided and the said decision was subject matter of consideration before the co-ordinate Bench in ***VATAP-32-2017, M/s. A.P. Processors vs. State of Haryana*** decided on 17.05.2018. In sum and

substance, the co-ordinate Bench, while deciding substantial question of the issue of wasting of dyes which had been raised, framed the following question:-

> *"(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the levy of tax on the entire value of dyes used by the appellant in the job work process of dyeing of fabric ignoring the quantity of dyes which are wasted during the process in which property is not transferred to the principals?*

3. The said Bench thereafter proceeded to decide the appeal in favour of the assessee by coming to the following conclusion while remanding the matter:-

> *"26. Having arrived at the conclusion that 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. In the present case, it would be essential to determine the value of consumables transferred in the goods on which tax is leviable. 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.*
>
> *27. In the light of legal position enunciated hereinabove, the substantial questions of law as claimed are answered accordingly and the impugned orders passed by the authorities are hereby set aside. The matter is 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 appellant. The Assessing Officer would conduct a factual enquiry in this regard after giving liberty to the parties to produce evidence in respect of their respective contentions. Thereafter, he would be at liberty to proceed in the matter for adding the percentage of chemicals, dyes and colours in the value of the turnover which are retained or embedded on the textile or fabrics, as the case may be, in accordance with law. The Assessing Officer shall do so after examining the relevant statutory provisions and the case law on the point as noticed hereinabove. All the appeals stand disposed of accordingly."*

4. The matter was taken to the Apex Court by the State in SLP (Civil)-8673-2019, converted into Civil Appeal No.1311 of 2020 and the SLP was dismissed while upholding the order of the co-ordinate Bench. In ***VATAP-20-2020, M/s. Color Fabs Pvt. Ltd. vs. State of Haryana and another*** decided on 07.12.2023, we had also followed the said view and allowed the appeal and remanded the matter.

5. The State has though objected to the filing of the writ petitions on the ground that there is an alternate remedy of filing an appeal before this Court.

6. However, keeping in view the fact that the matter is to come back to this Court only on account of the fact that the nomenclature as such has to be changed, we do not feel it is a reasonable ground as such to deny the benefit as it will only add to the litigation and to the number of cases pending

before this Court.

7. Counsel for the State has also been fair enough to place on record the communication addressed from the Excise and Taxation Commissioner dated 05.12.2019 to point out that the issues involved in VATAP-32-2017 are similar and, therefore, the matter is covered by the said case.

8. Keeping in view the above, the present writ petitions are allowed and the orders of the Tribunal dated 08.08.2017 in STA-726/2010-2011 (Annexure P-3 in CWP-1588-2018) and the order dated 30.08.2017 passed in STA-607/2012-13 (Annexure P-3 in CWP-1589-2018) are set aside alongwith the orders dated 18.03.2008 and 30.09.2010 (Annexures P-1 and P-2 in CWP-1588-2018) and orders dated 22.03.2010 and 12.12.2012 (Annexures P-1 and P-2 in CWP-1589-2018). The matters are remanded to the Assessing Officer to conduct a factual enquiry by giving liberty to all the parties to take all the pleas in support of their respective case as observed in *M/s. A.P. Processors case (supra).*

(G.S. SANDHAWALIA)
JUDGE

19.12.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No