HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GSTR-12-2010 (O&M)
Date of decision: 21.09.2023

M/s. Aggarwal Oil Mills ....Petitioner

Vs.

State of Haryana ....Respondent

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

Present: Mr. Rishab Singla, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

1. In the present case, vide order dated 24.02.2010, the Haryana Tax Tribunal, Chandigarh had referred the following questions of law to the High Court:-

> 1. Whether on the facts and in the circumstances of the case, the dealer is entitled to rebate on the entire amount of tax paid on purchase of cotton seed at first stage and used in manufacturing of oil, oil-cake and residue in terms of the provisions of Section 15A of the Haryana General Sales Tax Act, 1973 read with rule 24A of the Haryana General Sales Tax Rules, 1975.
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> 2. If answer to the above question is in affirmative, whether the dealer is entitled to refund of tax paid in excess at first stage, over and above tax payable on finished goods at the stage of sale at his hands?

2. The brief facts of the case are that the petitioner dealer

(hereinafter referred to as 'the assessee') was engaged *inter alia* in the business of crushing cotton seed yielding cotton-seed oil, oil-cake and residue. The case related to 1995-96. Cotton seed was declared goods. It was taxable at the stage of first sale in the State of Haryana at that relavent time. Cotton-seed oil was also taxable at the stage of first sale. Oil-cake was tax free. Residue was taxable at the stage of last sale. The assessee purchased cotton seed both from within the State as well as from outside the State. He was charged to tax on purchase of cotton seed in the State and he charged tax on sale of cotton-seed oil in the State. In order to avoid double taxation, once on the purchase of raw materials and again on sale of goods manufactured from the raw materials, Section 15A of the Haryana General Sales Tax Act, 1973 (in short 'the Act') and rule 24A of the Haryana General Sales Tax Rules, 1975 (in short'the Rules') were enacted. These provisions at that relevant time read, were as under:-

> "[Section 15A as substituted by Act 9 of 1993 dated 10.2.1993, with effect from 27.5.71]
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> "15A. ADJUSTMENT OR REFUND OF TAX IN CERTAIN CASES
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> Subject to the provisions of clause (iii) of proviso to sub-section (1) of section 15 and subject to the conditions and restrictions, as may be prescribed-
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> (i) the tax leviable under this Act or the Central Sales Tax Act, 1956, on the sale of goods by a dealer manufactured by him, shall be reduced by the amount of tax paid in the State on the sale or purchase of goods, other than the tax paid on the last purchase of paddy, cotton and oil seeds, used in their manufacture; and
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> (ii) when no tax is leviable on the sale of **manufactured goods except those specified in Schedule B**, subject to the conditions and exceptions specified therein, or when the tax leviable on the sale of manufactured goods is less than the tax paid in the State on the sale or purchase of goods, other than the

tax paid on the last purchase of paddy, cotton and oil seeds, used in their manufacture, the full amount of tax paid or the excess amount of tax paid over the tax leviable on sale, as the case may be, shall be refundable **if the manufactured goods are sold in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India:**

Provided that in case the manufactured goods have been sold before the 1 day of January, 1988, the tax paid on goods, leviable to tax at the first stage of sale under section 18, used in their manufacture, shall not be refunded."

[Following Explanation added by Act 7 of 1996, with effect from 27-5-71]

"Explanation-For the purpose of this section goods used in manufacture shall be goods used by a dealer as raw materials, processing materials, tools,

stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale and shall include containers and packing materials used for packing of the goods manufactured or processed.

[Rule 24A inserted by 1" Amendment, Rules, 1988 dated 24/3/88]

"Rule 24A. Deduction or refund of tax paid on goods at the first stage of sale in certain cases. (Section 15A, 27, 43 and 64).

(1) A registered dealer may reduce the amount of tax paid under the Act at the first stage of sale of goods purchased by him, from the amount of tax payable by him on such goods or goods manufactured or processed therefrom, **when sold within the State or in the course of inter-State trade or commerce, or in the course of export outside the territory of India;** and

(i) When no tax is payable on sale of **such goods other than those specified in Schedule B**, the full amount of tax paid at the first stage

(ii) When the tax paid at the first stage exceeds the tax payable, the amount of excess tax; and

(iii) When the tax paid goods are sold to Government or to an organisation, sales to which are either exempt from payment of tax or are leviable to tax at a lower rate, the full amount of tax paid at the first stage if the sale is exempt from tax, or the difference between the amount of tax at the first stage and the tax calculated on sales to Government or to such organisation;

shall be refundable to the dealer on appending with the return, in form S.T.9 and, wherever applicable, in form I under the Central Sales Tax Act, 1956, an application in form S.T.33 on furnishing a certificate in form S.T.14 in proof of payment of tax by the selling registered dealer at the first stage:

Provided that no deduction of refund shall be admissible in respect of the same goods under this rule where deduction [under the Act or any other Rule] from turnover of refund of tax under the provisions of section 15(a) of the Central Sales Tax Act, 1956, is availed of.

(2) The assessing authority before allowing the refund under sub-rule (1) shall satisfy himself about the actual payment of tax at the first stage of sale. (3) The provision of sub-rule (1) **[and sub-rule (3)] of rule 35 of these rules shall apply mutatis mutandis to allow refund under this rule."

*Substituted for "under rule 24" vide G.S.R.37/H.A.20/73/5,64/91, dated 20/6/91.

**Inserted vide G.S.R.13/H.A.20/73/S.64/90, dated 1/2/90."

3. In 1995-96, the assessee crushed cotton seed purchased for Rs.98,83,216/- yielding tax-free oil cake worth Rs.69,88,200/- (62,62% in value), and taxable commodities-oil worth Rs.41,63,875/- (37.31%) and residue worth Rs.6750/- (0.07%). Out of cotton seed purchased for Rs.98,83,216/-, cotton seed purchased on payment of tax in the State was for Rs.77,37,204/- and the remaining cotton seed was purchased from outside the State. Broadly on these facts, the Assessing Authority allowed refund of Rs.1,25,266/- to the assessee by order dated 24.10.1996 **(Annexure P-1)**

under section 15A(ii) of the Act / rule 24A of the Rules on account of tax paid on purchase of cotton seed on payment of tax in the State. However, it appeared to the Revising Authority on examination of the assessment order that the Assessing Authority did not apply the provisions of section 15A(i)/rule 24A correctly to the case as he did not reduce the amount of tax paid on purchase of cotton seed in the State in proportion to its use in the manufacture of tax-free oil-cake being part of Schedule B to the Act for allowing adjustment of the said tax against the tax payable on sale of the goods manufactured. According to the Revising Authority, adjustment of tax paid on purchase of cotton seed could be allowed legally only in proportion of production of taxable goods-cotton-seed oil and oil-cake manufactured from crushing of cotton seed. Thus, computing, he raised a demand of Rs.75,349/- against the assessee, vide his order dated 9.8.2000 **(Annexure P-II)**. The order passed by the Revising Authority was upheld by the Member, Sales Tax Tribunal, Haryana on appeal, vide his order dated 12.10.2000 **(Annexure P-III)**

4. Learned counsel for the petitioner has referred to Division Bench judgment passed by this Court in the case of ***Sharda Cotton Ginning & Pressing Factory vs. State of Haryana and others*** [2011] 123 STC 449 (P&H) wherein this Court was examining the issue of rebate of tax paid on the raw material. In that case, the assessing authority allowed only proportionate rebate under rule 24-A of the Haryana General Sales Tax Rules, 1975 instead of full rebate on the cotton seeds, on the ground that "khal" obtained in the process of manufacture of cotton seed oil was a tax-free item. The Tribunal also held against the dealer. The Division Bench of this Court allowed the petition and quashed the impugned order with a direction to the Tribunal to decide the appeals filed by the petitioner afresh

after passing a speaking order, by holding that the Tribunal had misread the decision of the Supreme Court in ***Bharat Petroleum Corporation Ltd.'s case [1992] 85 STC 220*** where the Court had held that for claiming exemption, it was not necessary for the assessee to prove that the entire raw material had been used only for the manufacture of taxable goods. The relevant para is as under:-

> "11. We are, further of the view that the Tribunal has misread the decision of the Supreme Court in ***Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220.*** A careful reading of that decision shows that while deciding a bunch of appeals and writ petitions, their Lordships had held that for claiming exemption, it is not necessary for the assessee to prove that the entire raw material had been used only for manufacture of taxable goods. The relevant observations made by the Supreme Court in this respect are reproduced below:
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> > "Turning now to the main question, we are inclined to agree with respondents' counsel that they are entitled to a set-off of the entire tax paid by them on the purchases of sulphuric acid and cotton, respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be taxable is immaterial though we may point out that in the Bharat Petroleum case, the kerosene was also taxable for nine months in the year and in the case of Phulgaon Cotton Mills, yarn was also manufactured and it was subject to tax. Sri Dholakia contends for an implicit principle of apportionment the basis of turnovers

of various items of goods manufactured and restriction of the quantum of set-off to a proportion based on the turnover of taxable goods to the total turnover. He cited certain decisions under the Income-tax and Sales Tax Acts in support of this contention: Anglo-French Textile Company Ltd. v. Commissioner of Income-tax [1954] 25 ITR 27 (SC), Tata Iron & Steel Co. Ltd. v. State of Bihar AIR 1963 SC 577; [1963] 48 ITR 123 (SC) and Commissioner of Income-tax v. Best & Co. (Private) Ltd. [1966] 60 ITR 11 (SC). We do not think these cases are of assistance. The first two cases dealt with the question as to when profits and gains can be said to accrue or arise in a manufacturing business and the third held that when a receipt is a composite one of capital and revenue nature, it is open to the Revenue to apportion the same and bring the latter to tax. These are situations in which the taxable element is severable. Under the rules presently under consideration also, situations are conceivable where such severance is implicit. For instance, suppose the cotton purchased is utilised partly for manufacture of cloth that is taxable and partly for manufacture of cloth that is not taxable or partly for the manufacture of yarn which is taxable and is sold and partly for manufacture of cloth which is not taxable. In these instances, it is clear that only some of the cotton is utilised for the first purpose and some for the second purpose and so only the purchase tax paid in respect of the quantity utilised for the first purpose will be eligible for set-off. But the type of user with which we are concerned is a composite one in which it is not possible to correlate any part of the purchased goods as having gone in for the purpose of manufacture of taxable goods. The position is picturesquely brought out in the case of ***Bharat Petroleum***. The entire sulphuric acid purchased has no doubt been used in the manufacture of kerosene though perhaps not a drop of acid clings to the kerosene manufactured. Equally, the entire sulphuric acid has gone into the composition of the acid sludge. The 3,048.760 M.T. of acid have dissolved the impurities in the crude oil and conglomerated with them to constitute 3,541.485 M.T. of acid sludge. Having regard to the nature of the interactions here, it is incontrovertible that the entire sulphuric acid purchased has gone into the manufacture of the sludge. The rules do not require that the purchased goods must have been used only for the manufacture of taxable goods for sale. In this situation, it is not possible to cut down the quantum of relief clearly outlined in the rule on the basis of some general principle claimed to underlie the provision."

5. Learned counsel for the petitioner informed that against the judgment passed in ***M/s. Sharda Cotton's case (supra),*** the Hon'ble Supreme Court dismissed SLP (C) No. 002904/ 2002 on 08.09.2004. Hence, the interpretation given by the Division Bench is directly applicable to the facts of the present case.

6. Learned counsel for the respondent has not been able to dispute the factual position that the aforesaid judgment is upheld after the dismissal of the SLP (C) No. 002904/ 2002. As per the aforesaid judgment, once the entire cotton seeds after purchase had been used in the manufacturing and if one of the items is tax free, rebate cannot be reduced proportionately and it has to be allowed in full. Since both the questions i.e. (1) whether on the facts and in the circumstances of the case, the dealer is entitled to rebate on the entire amount of tax paid on purchase of cotton seed at first stage and used in manufacturing of oil, oil-cake and residue in terms of the provisions of Section 15A of the Haryana General Sales Tax Act, 1973 read with rule 24A of the Haryana General Sales Tax Rules, 1975 and (2) if answer to the above question is in affirmative, whether the dealer is entitled to refund of

tax paid in excess at first stage, over and above tax payable on finished goods at the stage of sale at his hands, have been answered in favour of the assessee.

General Sales Tax Reference is allowed.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

21.09.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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