

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**VATAP No. 39 of 2012 (O&M)
Order Reserved on: 20.12.2022
Order Pronounced on : 20.02.2023**

M/s DLF Limited

..... Appellant

versus

The State of Haryana and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: Mr.Sandeep Goyal, Advocate and
Mr.Nitish Bansal, Advocate
for the appellant.

Ms. Shruti Jain Goyal, DAG, Haryana.

TEJINDER SINGH DHINDSA, J.

The present appeal is directed against the order of the Haryana Tax Tribunal dated 01.07.2005 (Annexure A-7) whereby the order of the Excise and Taxation Commissioner refusing to grant the refund of the excess amount of tax paid by the appellant as determined by the Assessing Authority has been upheld.

Appellant is a company incorporated under the Companies Act, 1956. Name of the company was changed from M/s DLF Universal Ltd. to DLF Ltd. w.e.f. 27.05.2006. Appellant-company was a subsidiary of DLF Universal Ltd. and was engaged in the activity of construction of buildings. Such construction activity was closed down by DLF Industries Ltd. in the

year 1996 and thereafter machinery and equipments etc. were rented out to M/s DLF Universal Ltd. on the strength of an agreement executed at New Delhi.

During the period in question i.e. 1998-1999 the appellant-company was duly registered for sales tax under the provisions of the Haryana General Sales Tax Act and filed its returns reflecting turn over of Rs.10,36,98,420/-. Out of such total turn over an amount of Rs. 7,71,16,529/- was depicted as rental income on account of machinery and equipments etc. given to M/s DLF Universal Ltd. On the aforesaid amount of rental, a tax of Rs. 52,37,790/- was deposited along with the returns treating the same to be deemed sale being transfer of property in goods. At the stage of assessing of return by the Assessing Authority for the year 1998-99, the appellant-company took a stand that no tax is payable by it under the Haryana Act as the situs of sale would be outside Haryana i.e. at Delhi where the agreement had been executed. Appellant-company at that stage had placed reliance upon the judgment of the Apex Court in *M/s 20th Century Finance Corporation Ltd., reported as 119 STC 182*, wherein it had been held that tax is leviable by the State where the agreement is executed for transfer of right to use the goods. Accordingly appellant-company applied for refund of tax paid on the rent of machinery and equipment in which agreement had been executed in Delhi. The Assessing Authority vide assessment order dated 11.02.2003 (Annexure A-1) took the following view:-

“ The case was examined in the light of the decision of the Hon'ble Supreme Court of India in the 20th Century Finance Corporation Ltd. Case and on the basis of facts and

circumstances of the case, it is clear that the transaction of rental between DLF Industries Ltd. and DLF Universal Ltd. was outside the jurisdiction of the Haryana State because the agreement between the two parties was executed outside the State of Haryana. Therefore, the rental income from M/s DLF Universal Ltd. can not form part of the turnover of the assessee in Haryana. Another aspect i.e. claim of refund also arises in this case and the claim of refund has been examined in the light of the decision of the Hon'ble Supreme Court of India in the case of M/s Mafatlal Industries Ltd. vs. The Union of India (STC-SC page-467). Shri Vipin Jindal, GM Finance of the company as well as power of Attorney holder for both the companies has pointed out that DLF Industries Ltd. was merged into DLF Universal Ltd. vide order dated 28th July 2000 of Pb. And Hr. High Court and Delhi High Court order dated 8th August 2000. The merger of the two companies was as per the scheme of amalgamation effective from 1st April 1999. Shri Vipin Jindal has pleaded that both lessor and lessee companies have become one legal entity. Therefore, the claim of refund cannot be questioned on this ground. However the claim of refund has rightly been made by M/s DLF Universal Ltd. which had actually borne the burden of tax. At the same time he has pointed out the decision of the Hon'ble Supreme Court is not applicable in this case because the decision was given in the light of the provisions/scheme of the Central Excise Act whereas the scheme of the HGST Act clearly provides for the refund of tax and the scheme of the HGST Act is different from that of the Central Excise Act. The written arguments of Shri Vipin Jindal and the photocopies of the High Court orders are placed on the file. Thus the claim of refund has been examined in the light of the decision of the Hon'ble Supreme Court of India in the case of M/s Mafat Lal Industries Ltd. and it is clear that the lessor and lessee had become one legal entity after amalgamation. Moreover, the decision of the Hon'ble

Supreme Court was based on the scheme of the Central Excise Act and the HGST Act is quite different. Thus on the basis of facts and circumstances of the case, the claim of refund seems to be genuine and therefore admissible.”

As such a refund of Rs. 52,46,590/- was calculated by the Assessing Authority.

As per provisions of the Rule 36 of the Haryana General Sales Tax Rules read with Section 43 of the Act, a refund exceeding Rs. 10 lakhs has to be sanctioned by the Commissioner and accordingly the refund calculated by the Assessing Authority was referred to the Commissioner for necessary approval. The Commissioner vide order dated 12.08.2003 (Annexure A-2) declined to approve the refund. Appellant-company preferred an appeal before the Haryana Tax Tribunal and vide order dated 02.09.2004 the matter was remanded to the Excise and Taxation Commissioner, Haryana for fresh decision in accordance with law and after hearing the parties. The Commissioner, however, vide order dated 19.01.2005 (Annexure A-5) reiterated its earlier view and declined the refund to the appellant. The appellant-company again approached the Haryana Tax Tribunal and which has led to the passing of the impugned order dated 01.07.2005 (Annexure A-7) taking a view that the Excise and Taxation Commissioner, Haryana was justified in refusing to accord approval to the refunds allowed in favour of the appellant-company by the Assessing Authority on the principle of unjust enrichment.

We have heard counsel for the parties and have perused the pleadings on record.

We find that the issue that arises for consideration in the present appeal is as to whether the Commissioner had jurisdiction under Rule 36 of the Haryana General Sales Tax Rules read with Section 43 of the Haryana General Sales Tax Act to reject the refund and to go into the merits of the assessment framed by the Assessing Authority.

We find that the issue culled out hereinabove is no longer *res integra*. A Division Bench of this Court in **M/s Raghbar Dass Hukam Chand vs. State of Haryana and others (CWP No. 19941 of 2005) decided on 07.05.2009** (Annexure A-8) had precisely dealt with the question of law i.e. whether the higher authorities in the hierarchy of Sales Tax Department, Haryana in the garb of exercising power of granting sanction under Rule 36 of Haryana General Sales Tax Rules to the refund orders passed by the Assessing Officer, could set aside such order of assessment? View taken was that irrespective of merits of the case the refund has to follow order of the Assessing Authority and in proceedings for determining refund, only question was of quantification of refund. The relevant observations of the Division Bench were in the following terms:-

“ Therefore, we are of the view that on principle as well as on precedent, it stands established that an officer exercising the power of determining the amount of refund cannot exercise the power of review or appeal or revision. Such an officer has to respect the order of assessment and then is required to proceed to determine the amount of refund. The provisions of Section 43 read with Rule 36 postulate the limits of their power as already noticed and, therefore, the orders passed by the DETC are liable to be set aside.”

It has gone uncontroverted that the judgment of the Division Bench of this Court in **Raghbar Dass Human Chand (supra)** stands

affirmed by the Hon'ble Supreme Court as the SLP preferred by the State of Haryana was dismissed.

We may also refer to a Division Bench judgment of this Court in **Jai Bharat Gum and Chemicals Ltd. vs. State of Haryana and others (2011) 38 VST 142 (P&H)** where the same view was reiterated following the earlier Division Bench judgment in **Ragobar Dass Hukam Chand (supra)**.

In view of the above and following the dictum laid down in **Ragobar Dass Hukam Chand (Supra)** we find that the impugned order passed by the Haryana Tax Tribunal dated 01.07.2005 (Annexure A-7) cannot sustain. The appellant-company consequently would be entitled to the refund in the light of the assessment order dated 11.02.2003 (Annexure A-1) pertaining to the assessment year 1998-99.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

February 20, 2023
sunita

Whether Reasoned/Speaking : Yes

Whether Reportable : Yes