IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103 ***2023:PHHC:156316-DB***

CM-18717-CII-2023 in/and
VATAP-22-2020
Date of Decision: 07.12.2023

M/s. Color Fabs Pvt. Ltd. .....Appellant(s)

Versus

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

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

Present: Mr. Sandeep Goyal, Advocate,
and Mr. Ishaan Loomba, Advocate,
for the appellant.

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

G.S.SANDHAWALIA, J. (Oral)

CM-18717-CII-2023

1. Application has been filed for listing the main case for hearing in regular motion list since ***SLP (Civil)-8673-2019, The State of Haryana and another vs. M/s. A.P. Porcessors*** has been decided on 10.07.2023 after conversion to Civil Appeal No.1311-2020.

2. Keeping in view the above, the application is allowed.

3. The main case is listed in the motion list.

VATAP-22-2020

1. The present appeal has been filed under Section 9(2) of The Central Sales Tax, Act, 1956 read with Section 36 of the Haryana Value Added Tax Act, 2003 against the order dated 06.09.2019 (Annexure A-4) passed by the Haryana Tax Tribunal for the assessment year 2004-05.

2. Notice of motion.

3. Mr. Sharan Sethi, Addl. A.G., Haryana accepts notice on behalf of the respondents-State.

4. With the consent of counsel for both the parties, the main appeal is taken up being covered by the aforesaid judgment of the Apex Court in SLP (Civil)-8673-2019 converted into Civil Appeal No.1311-2020.

5. The following substantial questions of law are sought to be raised for consideration before this Court:-

> *"(1) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in upholding the levy of tax on 25% of chemicals used as consumables in the process of job work of dyeing of fabric by assuming that property in the goods has passed on to the principals?*
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> *(ii) Whether on the facts and in the circumstances of the case, the Ld. 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?*
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> *(iii) Whether on the facts and in the circumstances of the case, the findings of Ld. Tribunal are perverse insofar as it has been held that property in the goods i.e. dyes and chemicals is transferred to the principals in the job work of dyeing the fabric?*
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> *(iv) Whether on the facts and in the circumstances of the case, the authorities below the Ld. Tribunal were justified in placing reliance upon the judgment of Hon'ble Bombay High Court in the case of Commissioner of Sales Tax Vs. Matushree Textiles Ltd., ignoring that the said judgment dealt with applicability of works contract tax and not quantity of goods on which tax is to be levied?"*

6. The Haryana Tax Tribunal, vide order dated 06.09.2019 (Annexure A-4), dismissed the appeal wherein, the contention of the assessee was that tax is only leviable on the small part of dyes and chemicals used in the job work which is passed on to the cloth whereas the remaining chemicals and dyes are washed away and do not pass on to the cloth. The Tribunal had noticed that the Assessing Authority has accordingly levied tax by taking into consideration only 25% quantity of the chemicals used by the assessee and 100% quantity of dyes and, thus, the Tribunal noticed that the chemicals were determined proportionately at 25% of the total chemicals consumed as per industry trend on the integrated process of washing whereas the entire quantity of chemicals used by the assessee has not been subjected to tax and upheld the order. The Tribunal had also noticed the fact that this Court in VATAP-32-2017, M/s. A.P. Processors, Faridabad vs. State of Haryana had already decided the issue on 17.05.2018 in favour of the assessee and had remanded the case to the Assessing Authority. However, since the matter was pending before the Apex Court and the judgment had been stayed, the appeal was dismissed.

7. As noticed, the SLP has now been dismissed by keeping in mind that the matters have been remanded to the Assessing Officer to consider the case of the assessee as well as of the appellants and to pass a fresh order. The observations made in Para No.27 of the judgment dated 17.05.2018 rendered by the co-ordinate Bench in ***M/s. A.P. Processors vs. State of Haryana*** have already been taken into consideration. One of the substantial questions of law was also on the issue of dyes. The same reads thus:-

> *"(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?*

8. The co-ordinate Bench accordingly answered the question and set aside the order passed by the authorities while observing as under:-

> *"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.*
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> *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."*

9. In such circumstances, we are of the considered opinion that the issue having already been decided against the State and the matter being covered by the judgment of the Apex Court in SLP (Civil)-8673-2019, converted into to Civil Appeal No.1311-2020, the order dated 06.09.2019 (Annexure A-4) passed by the Tribunal and the Authorities below are not sustainable.

10. Accordingly, the appeal is allowed in the above terms. The matter is remanded to the Assessing Officer to conduct the factual enquiry by giving liberty to 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

07.12.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No