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

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**RSA-734-1994 (O&M)
Date of decision: 08.04.2024**

JAI NARAIN MITTAL

..Appellant

Versus

STATE OF HARYANA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. J.S. Pannu, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. This is plaintiff's regular second appeal against the judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial Court. M/s Acharya (India) Ltd. was registered as dealer under Haryana General Sales Tax Act, 1973 (hereinafter referred to as the '1973 Act')/Central Sales Tax Act, 1956. On 12.07.1982, the appellant stood as a surety upto the amount of Rs.50,000/- for any default, which may be committed in payment of the tax by M/s Acharya (India) Ltd. It was stipulated in the surety bond that in the eventuality of withdrawal of the surety/guarantee, the guarantor will continue to remain liable for a period of six months. On 14.09.1982, Ex.P-12, the plaintiff withdrew his guarantee. The dealer was asked to arrange fresh surety. He furnished surety bonds of 17.09.1982 by Sh. Nirmal Singh and Sh. Najar Singh. In the year 1986,

assessment order was passed against the dealer for failing to file return and the notice was given to the plaintiff to recover Rs.50,000/-. The trial Court decreed the suit, however, the First Appellate Court reversed the judgment resulting in dismissal of plaintiff's suit.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned digital record.

3. The learned counsel representing the appellant contends that the surety bonds furnished by the appellant would become ineffective and would stand withdrawn on expiry of six months from 14.09.1982. He submits that on 15.03.1983, the liability of the appellant to reimburse the department ceases to exist. He submits that the order of assessment was passed on 21.03.1983 (Ex.P-2) and hence the appellant could not be called upon to reimburse the amount.

4. Per contra, the learned counsel representing the State of Haryana submits that the liability relates to the period before March, 1983. He further submits that Section 62 of the 1973 Act, bars jurisdiction of the Civil Court to entertain any suit challenging the assessment order or any other order passed under the 1973 Act. The learned counsel representing the appellant relies upon the judgment passed in ***State of Haryana Vs. Vipin Kumar Gupta, (2003) 135 PLR 528***, to contend that in such circumstances, the bar of Section 62 of the 1973 Act could not be attracted in the case.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. Though, the learned counsel representing the State of Haryana has contended that the liability relate to the period before March,1983, however, he failed to substantiate the same. Ex.P-2 is the order of assessment of M/s Acharya (India) Ltd. It no where states that the default is with respect to the period prior to March, 1983. In fact, in para 2 of the order it is specifically noted that assessee has failed to file return of the month of May, 1983, which resulted in order of assessment. In any case, the liability of the guarantor would arise only when order of assessment was passed, which was passed on 21.03.1986.

7. The First Appellate Court has erred in relying upon Section 133 of the Contract Act, 1872, which is not applicable in the present case because the same operates in the field when there is any variation made between the principle (debtor) and the creditor without surety's consent. In this case, there is no variation by the debtor or the creditor.

8. As regard the last submission, a Coordinate Bench in ***Vipin Kumar Gupta's case (supra)***, has held as under:-

> *"4. The question of jurisdiction of the Civil Court to entertain such a suit would not be barred because defendant-State in the facts and circumstances of the case cannot be acting within the four corners of the Haryana General Sales Tax Act, 1973. Therefore, the bar of Section 62 of the Act would not be attracted in the present case. Moreover objection under Section 62 has not been pressed by the defendant-appellant in either of the Courts below. Therefore, there is no substance in this appeal and the same is liable to be dismissed. 5. For the reasons recorded above, this appeal fails and the same is dismissed."*

9. Keeping in view the aforesaid discussion, this Court is left with no choice but to reverse the judgment and decree passed by the First Appellate Court and restore that of the trial Court.

10. Consequently, the present appeal is allowed.

11. All the pending miscellaneous applications, if any, are also disposed of.

April 08th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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