IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

241-3 **CWP-9245-2022**
Date of Decision: April 24, 2024

M/s Compass India Food Services Private Ltd ......Petitioner(s)

Vs.

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

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Amar Pratap Singh, Advocate
for the petitioner(s).

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

SANJEEV PRAKASH SHARMA.J. (ORAL)

The petitioner by way of the instant petition has assailed the order dated 09.02.2022 passed by respondent No.3 relying upon the clarification order dated 20.08.2013 and thereby denying the input tax credit of Rs.32,23,322/-.

2. Learned counsel for the petitioner submits that the order impugned is violative of Article 246 of the Constitution of India and fails to notice the documents which were produced and were also available with the petitioner. Learned counsel for the petitioner further submits that the tax charged under the HVAT Act for services of catering cannot be included and would not form part of the sale price. The legality of the said Clarification Order dated 20.08.2013 was challenged in the appeal but the appeal is pending for non-formation of the Appellate Tribunal. This Court has however, reached to the conclusion that the service charged, part of the sale price, cannot be

included for charging VAT in cases relating to catering business and the assessment order dated 10.01.2020 was quashed and set aside by this Court.

3. It is an admitted position by this Court in the case titled as "***M/s Sodexo India Services Private Ltd. Vs. State of Haryana and others***" passed in CWP-1173 of 2023 decided on 18.04.2023 and held as under:-

> *"9. Thus, we find that the issue is no more res integra and we follow the view already expressed by the Hon'ble Division Bench of this Court in relation to GSTR No.1 of 2009 decided on 07.09.2010 and held the action of the respondents in issuing show cause notice for revision of assessment, Annexure P/2 dated 17.08.2021, to be unjustified and based on wrongful interpretation of sale in relation to catering business. We also noticed that the clarification issued in M/s Renginton has failed to take notice of the judgment passed by this Court in the case of M/s Cap 'N' Chops Caterers (supra) and such interpretations may on whims and fancies without taking into consideration the law as settled by this Court and the amounts to overreaching the process of the Court and creates unnecessary litigation before this Court. The clarification is accordingly quashed, hence, set aside. Henceforth, the law already settled by this Hon'ble Court in the case of M/s Cap 'N' Chops Caterers (supra), shall apply to all such like matters. A circular in this regard is directed to be issued by the Principal Secretary, Excise and Taxation Department, Haryana, so that, no further litigation arises on this aspect. A copy of this order is directed to be sent to the Principal Secretary for necessary compliance."*

4. In view thereof, the imposition of VAT on service tax element shall stand quashed.

5. That apart from this it is also an admitted position that the petitioner had not produced the original tax invoices and form VAT C-4 for verification at the time of assessment as he was unable to appear before the authorities. However, learned counsel for the respondent stated that the petitioner deliberately did not produce the original invoices before the authorities and the appellate Court had rightly dis-allowed the appeal of the petitioner for production of documents at the appellate stage.

6. We find that the income tax credit of the petitioner which he is entitled to, has been rejected simply on account of the failure to produce original VAT invoice and form C-4 certificate before the assessing officer. However, in appeal where the said documents were produced, the appellate authority ignored the same. We feel that once the original VAT invoices and VAT C-4 certificate in original have been placed on record, even at the stage of appeal, the same could not have been ignored or dis-allowed because the process of taxation cannot be said to be adversarial adjudication but a civil adjudication to be on the basis of facts. The appellate authority should have remanded the case to assessing officer for fresh adjudication.

7. In the circumstances, we are unable to uphold the order dated 09.02.2022 passed by respondent No.3 and set aside the same with directions to pass a fresh order after considering the original VAT invoices and VAT C-4 form certificate. After verifying the same from the supporting documents, the respondent No.4 shall pass a fresh order.

8. The petitioner would be given liberty to place the original tax invoices and VAT C-4 form before the authority. Upon such submission,

speaking order shall be passed expeditiously preferably within a period of three months.

9. In view of the above, the writ petition is partly allowed. The imposition of VAT on service tax element is quashed and the authority shall pass fresh order as per above directions.

10 All pending applications, if any, stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

April 24, 2024
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Whether speaking/reasoned: Speaking
Whether reportable: Yes / No