IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP No.66 of 2009
Date of decision: 24.09.2015

M/s. Kapurthala Beltings

..... Appellant

Versus

The State of Punjab and others

..… Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

PRESENT: Mr.Aman Bansal, Advocate for the appellant.

Mr.Piyush Kant Jain, Addl.A.G., Punjab.

RAMENDRA JAIN, J.

1. This order shall dispose of VATAP Nos.66 and 67 of 2009 as according to the learned counsel for the parties, common issues arise in both the appeals. However, the facts are being extracted from VATAP No. 66 of 2009.

2. VATAP No.66 of 2009 has been preferred by the appellant-assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated 6.2.2009, Annexure A.8 passed by the Punjab Value Added Tax Tribunal, Chandigarh (in short, "the Tribunal"), claiming following substantial questions of law:-

> "i) Whether in the facts and circumstances of the case, the learned Tribunal is justified in law in upholding the cancellation of exemption certificate dated 20.4.1998 (Annexure A.2)?
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> ii) Whether in the facts and circumstances of the case, the learned Tribunal is justified in sustaining the cancellation of exemption certificate (Annexure A.2) by holding that there had been violation of Rule 2(xi-a) of the Exemption Rules which is a definition clause?
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> iii) Whether the learned Tribunal could sustain the cancellation of the exemption certificate (Annexure A.2) without finding violation of a particular provision of the Act or the Rules made thereunder, casting an obligation upon the appellant to export 25% of the production in order to achieve the status of 'Export Oriented unit'?
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> iv) Whether in the facts and circumstances of the case, Rule 8(1)(vi) has been rightly invoked?
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> v) Whether the learned Tribunal is justified in holding that the appellant has violated the provisions of Rule 2 (xi-a) of the Exemption Rules when respondent No.3, the first appellate authority had not recorded any finding on this issue?"

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.66 of 2009 may be noticed. The appellant established a unit at village Dhawankha Jagir, Jalandhar Road, Kapurthala to manufacture the Rubber/Leather Nylon Sandwich Beltings and other transmission beltings in the financial year 1989-90 and got it registered as a 'dealer' under the provisions of erstwhile Punjab General Sales Tax Act, 1948 (for short, 'PGST Act') and also under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act') vide registration No.

25334411. Thereafter, Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act') came into being with effect from 01.04.2005. The appellant continued to be registered as a taxable person under TIN No. 03651090024 and used to regularly file its quarterly returns under the PGST Act as well as CST Act. In the year 2000, on expansion of production capacity, the appellant applied for the grant of incentive of sales tax exemption, whereupon, General Manager, District Kapurthala issued eligibility certificate No. 537 dated 30.01.2001 (Annexure A-1) authorizing it to take incentive of sales tax exemption for a period of ten years or for the maximum amount of ₹ 45,71,000/- with effect from 30.09.2000 to 29.09.2010. Pursuant thereto, the Assistant Excise and Taxation Commissioner, Kapurthala also issued exemption certificate No. 123/2001-02 dated 23.01.2002 (Annexure A-2) (on expansion basis) to the appellant as an Export Oriented Unit (EOU). Accordingly, the appellant was exempted from payment of sales tax for the period 30.09.2000 to 29.09.2010 subject to the maximum limit of ₹ 45,71,000/-. On the inspection of the business premises by the Taxing Authorities, certain books of account, sale invoices pertaining to the year 2000-01 and 2001-02 were taken into possession. Accordingly, respondent No.4-Assistant Excise and Taxation Officer-cum-Assessing Authority, Kapurthala, issued notice dated 12.09.2002 under Rule 8 of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, 'the Rules') to explain as to why its exemption certificate should not be cancelled for illegally collecting sales tax of ₹ 4,41,658/- from its customers in the shape of handling charges in violation of the provisions of Sections 10(4) and 30-A of the PGST Act. The appellant contested the notice, taking the plea that the aforesaid amount of ₹ 4,41,658/- was charged as “handling charges” and not “sales tax” from its customers. However, the above plea of the appellant could not convince respondent No.4 and resultantly, vide order dated 14.11.2002 (Annexure A-3), he cancelled the exemption certificates under Rule 8(1)(vi) of the Rules for violating the provisions of Rule 2(xi-a) and under section 10(4) read with section 30-A of the PGST Act. It was also held that the appellant failed to export at least 25% of its products in the markets outside India during the aforesaid period 2000-01 and 2001-02 and, therefore, did not fulfil the minimum qualifying requirement of law as “Expert Oriented Unit” defined under Rule 2(xi-a) of the Rules. Aggrieved by the aforesaid order dated 14.11.2002 (Annexure A-3), the appellant filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), Jalandhar Division, Jalandhar who remanded the case back to respondent No.4 with a direction to pass afresh order after considering the reply of the appellant vide order dated 23.05.2003 (Annexure A-4). After giving an opportunity of hearing to the appellant, respondent No.4 did not differ with his findings given in order dated 14.11.2002 (Annexure A-3) and cancelled the exemption certificate granted to the appellant vide order dated 30.08.2005 (Annexure A-5). Aggrieved by the aforesaid order dated 30.8.2005 (Annexure A-5), the appellants preferred two separate appeals under Section 20(1)(a) of the PGST Act before respondent No.3, which were dismissed vide order dated 17.10.2006 (Annexure A-6). Being dissatisfied, the appellants approached the Punjab Value Added Tax Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') by way of filing its appeals, but remained unsuccessful. Hence the instant appeals by the appellant-assessee.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the authorities below misconstrued the definition of 'Export Oriented Unit' given under Rule 2 clause (xi-a) of the Rules, which nowhere provides that the appellant was legally bound to export 25% of its production to claim exemption under Rule 8(1)(vi) of the Rules. Hence, non-achieving the status of 'Export Oriented Unit' as defined in Rule 2(xi-a) of the Rules did not lead to violation of any of the provision of the Act or the Rules made thereunder so as to clothe the respondents with jurisdiction to cancel/sustain the cancellation of the exemption certificate. It was further submitted that the authorities below had erred in holding that the appellant under the garb of "handling charges" was unauthorizedly charging "sales tax" from its customers against "C" Form and "STXXII" Form on the sale invoices in violation of PGST Act/Rules. Even otherwise, the Department of Industries, Punjab had never recommended the cancellation of exemption certificate of the appellant, therefore, the same was wrongly cancelled by the respondent-authorities.

6. On the other hand, learned State counsel while refuting the above arguments of learned counsel for the appellant prayed for dismissal of the appeals.

7. We have given our considerable thoughts to the rival submissions made by learned counsel for the parties.

8. The twin issues that arise for consideration in these appeals are :-

(i) Whether the authorities below erred in cancelling the exemption certificate granted to the petitioner being Export

Oriented Unit?

(ii) Whether the appellant had charged only handling charges from its customers?

9. Before dealing with the arguments, it is necessary to reproduce the definition of 'Export Oriented Unit' given in Rule 2(xi-a) of the Rules which reads thus:-

> "Rule 2 (i) to (x) XXX XXX XXX
>
> (xi-a) ***'Export oriented unit'*** *means an industrial unit exporting <u>at least twenty-five per cent of its products in markets outside India</u> with minimum value addition of thirty-three per cent against direct receipt of foreign exchange or through merchant exporters including the Punjab Small Industries and Export Corporation or any other trading house registered as such with the Department of Industries, Punjab."*

10. A perusal of the above provisions shows that export of at least 25% of the production by an 'Export Oriented Unit' at the markets outside India is compulsory. It has been categorically recorded by the assessing authority that in the assessment years 2000-01 and 2001-02, the appellant exported nothing outside India. In the assessment year 2001-02, the appellant exported only 1.68% of its products in the markets outside India. Further, after going through the said sale invoices and agreement, it was noticed by the assessing authority that the appellant had charged sales tax in the sale vouchers and also posted the same in the sale book under the respective heads i.e. "PST" (Punjab Sales Tax) and "CST" (Central Sales Tax) as the case may be. The Assessing Authority also found that the

appellant had neither charged or recovered any handling charges from the customers nor mentioned the same in the sale vouchers. Only in some bills "forwarding and postage" was charged which were posted accordingly. These entries of sale prices including the sale tax element were then posted in the accounts of each customer and, thus, the full amount of goods including the sale tax was collected from the customers. However, sale tax collected from the customers was not deposited by the appellant into Government Treasury in violation of the provisions of Sections 10(4) and 30-A of the PGST Act. To clarify the above fact, the Assessing Authority even mentioned the details of 14 sale vouchers in his order. The abovesaid sale vouchers were never disputed by the appellant. The stand of the appellant that it had only charged "handling charges" from its customers was disbelieved by the Assessing Authority after confronting the appellant with its own ledger page No. 39 of M/s. Kapurthala Hi-Tech Transbelt Private Limited (appellant in VATAP No. 67 of 2009) sister concern of M/s. Kapurthala Beltings (appellant in VATAP No. 66 of 2009) wherein the entries of "CST" of ₹ 4,03,657.49 Paise (Form J-236 Page) and "PST" ₹ 36,800.92 Paise and "PDT" ₹ 56.38 Paise were transferred to Trading Account totalling ₹ 4,40,514.79 Paise as on 31.03.2001. The stand of the appellant that the said entries were wrongly made was not found to be genuine as it could not give any satisfactory reply. The appellant was also disbelieved, because of not mentioning of charging of "handling charges" on the sale invoice/bills or in the sale books. Even otherwise the appellant had admitted before the Assessing Authority that the amount received from the customers included sales tax. Thus, it was rightly held by the Assessing Authority that the appellant had violated the provisions of the rules and accordingly, was not entitled to any exemption under Rule 8(2) of the Rules. The relevant findings recorded by the Assessing Officer relating to charging of sales tax read thus:-

> “Here, in this case the dealer was granted exemption certificate No.123/2000-2001 dated 23.1.2002 to avail sales tax exemption of ₹ 45,71,000/- for the period from 30.9.2000 to 29.9.2010 as one of the incentives. But the dealer intentionally by violating the provisions of law planned and decided to charge and collect sales tax under the Act and the Central Act from his customers and retained the same with him for illegal and fraudulent enrichment, with this scheme in mind he did not mention on the sale invoices/bills that his unit was exempt from payment of sales tax so that his customers could never know that their seller (this dealer) was exempt from payment of tax and could not charge and collect sales tax from them. The photo copies of some sale invoices are placed on the file. With this mode, he has been successful in charging and collecting tax from his customers. This is proved from the inter state sale order dated 1.6.1998 of M/s Sameswar Enterprises, Coimbatore in case of sister concern – M/s Kapurthala Hi-Tech Transbelt (P) Limited, wherein provision for charging 4% CST against 'C' form is agreed upon. Copy of this agreement is available on record. Similar orders are booked by the other dealer also.
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> The dealer has charged sales tax under the Act and the Central Act in the sale vouchers and posted them in sale book under the respective heads “PST” (Means Punjab sales Tax) and “CST” (Central Sales Tax) as the case may be. In respect of every bill separate entry has been made in the sale book. The dealer neither charged nor recovered any handling charges from the customers and has not mentioned this fact anywhere in sale vouchers or sale book. Only in some bills “forwarding and postage” is charged which is posted accordingly in sale book in an independent column. The entries of sale prices including the sale tax element are then posted in the account of

each customer and thus the full amount of sale price of goods including sale tax is collected from the customers. The amount of sales tax charged and collected ₹ 12,504/- and ₹ 4,29,155/- under the Act and the Central Act respectively during the year 2001-02 from the customers which has not been paid by the dealer into the Govt. treasury was confronted to the dealer.

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After going through the record carefully i.e. sale vouchers, account books and other relevant record, I find that the dealer has charged tax and pocketed it but he was not authorized to do so. Moreover the requirements mentioned for availing exemption being an EOU have not been fulfilled by him as such he has contravened the provisions of the Punjab Deferment and Exemption Rules 1991. In view of the above mentioned facts, the exemption certificate granted under the Punjab Exemption and Deferment Rules, 1991 is hereby cancelled."

The Deputy Excise and Taxation Commissioner (Appeals) upheld the findings recorded by the Assessing Officer. On further appeal by the assessee, the Tribunal concurred with the findings recorded by the authorities below. The Tribunal recorded that the appellants were not 'Export Oriented Unit' with the following observations:-

"Rule 8(1) provides for cancellation of Deferment and Exemption Certificate. As per clause (vi) of this rule, the (Exemption and Deferment) certificate was liable to be cancelled if any of the provisions of he Act were violated.

Counsel for the appellant argued that the exemption certificate had been wrongly cancelled and appellant had not violated any rule. However, percentage of export out of India of its product was found to be 0% during last two quarters of 2000-01, 1.68% during the year 2001-02 and 0% in the first and second quarter of 2002-03. Counsel for the appellant had fairly conceded that the appellant has not been able to meet out the requirement of exports of 25% of its products in the market outside India till this date and may not be able to do so till even 29.9.2010, when the validity of the exemption certificate would otherwise expire.

When appellant has throughout been unable to comply with requirement to come within the definition of Export Oriented Unit as given in Rule 2 clause (xi-a) of Punjab General Sales Tax (D&E) Rules and even may not be able to meet the targets at all then there is violation of provisions of Rule 8(1) Clause (vi) of Punjab General Sales Tax (D&E) Rules, 1991.

Under these circumstances, the exemption certificate was liable to be cancelled, on this very score. As such, there is no merit in this appeal. The same is accordingly, dismissed."

11. Both the issues have rightly been concluded against the appellant. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings recorded by the authorities below warranting interference by this Court. Thus, questions of law as claimed are answered against the appellants in these appeals. Consequently, both the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

(RAMENDRA JAIN)
Judge

September 24, 2015
rishu/gs