IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 40 of 2015 (O&M)

Date of Decision: 20.8.2015

M/s Amit Papers

....Appellant.

Versus

State of Punjab

...Respondent.

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

PRESENT: Mr. Kumar Vishav Aggarwal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 11 days in refiling the appeal is condoned.

2. This appeal has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 31.3.2015 (Annexure P-7) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

i) Whether the order passed by the Ld. Tribunal is not perverse, as same has been passed without any evidence on record?

ii) Whether the goods purchased from a firm before its cancellation are not genuine?

iii) Whether the Ld. Tribunal ought to have used their power of summoning witness in calling upon the appellant herein to show documentary evidence of sales?

iv) Whether the impugned order is in violation of rules of natural justice and is otherwise sustainable in law?

3. Briefly stated, the facts for adjudication of the present appeal as narrated therein are that on 6.3.2008, the Excise and Taxation Officer, Mobile Wing, Chandigarh intercepted a goods vehicle bearing Truck No. PB-11J-1978 and the driver of the said vehicle produced the copy of bill No. 325 dated 28.2.2008. On the said truck, a penalty of ₹ 68,458/- was imposed vide order dated 17.3.2008 (Annexure P-1). Besides this, another truck bearing No. HR-58B-0127 was also detained on 27.2.2008 against bill Nos. 320 and 321 dated 26.2.2008 and a penalty of ₹ 1,80,845/- was imposed. The penalties were imposed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh. Feeling aggrieved, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala who vide order dated 16.4.2009 (Annexure P-2) dismissed the same holding that the bill was not genuine and proper as required under Section 51(6)(a) of the Act. Still dissatisfied, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 5.7.2010 (Annexure P-3) remanded the case to the Assistant Excise and Taxation Commissioner, Jalandhar-I to reopen the assessment case for the year 2007-08 and to go through all the transactions of the purchases for which ITC was claimed, particularly regarding purchases of goods intercepted while being sent to Cuttack. In pursuance thereto, the Assistant Excise and Taxation Commissioner vide re-assessment order dated 31.8.2010 (Annexure P-4) rejected the ITC on the ground that the firms from which the purchases were made, were cancelled by the

department from 13.5.2008. Penalty under Section 58 of the Act was imposed amounting to ₹ 79,602/- whereas penalty of ₹ 10,000/- was imposed under Section 60 of the Act. The order, Annexure P-4, was challenged by the assessee by filing an appeal before the Deputy Excise and Taxation Commissioner (A), Jalandhar who vide order dated 6.12.2012 (Annexure P-5) dismissed the appeal. Thereafter, the assessee filed appeal (Annexure P-6) against the order, Annexure P-5, before the Tribunal. The Tribunal vide order dated 31.3.2015 (Annexure P-7) confirmed the order Annexure P-5. Hence, the present appeal by the assessee.

4. Learned counsel for the appellant submitted that the sale transactions were genuine and the authorities had wrongly noted that the dealers, i.e. M/s R.S. Enterprises, Amritsar and Sunshine Overseas of Amritsar are bogus and fictitious. It was urged that in such circumstances, the levy of penalty was unsustainable.

5. After hearing the learned counsel for the appellant, we do not find any merit in the aforesaid contention. To evade central excise and VAT on the paper purchased from DSG Paper Mills Pvt. Ltd., Patiala without any bill, the assessee had shown the purchases from the fictitious dealers, i.e. M/s R.S. Enterprises, Amritsar and Sunshine Overseas of Amritsar. The said goods were dispatched to M/s Malhotra Book Depot of Cuttack. The Tribunal vide earlier order dated 5.7.2010 (Annexure P-3) had ordered for reopening of the assessment to examine the transactions relating to the purchase made by it for which ITC was claimed and particularly regarding the purchase of goods which were intercepted while being sent to Cuttack. The said order had become final as its validity was never assailed by the appellant. The ETO-cum-

Designated Officer, Jalandhar-I relying upon the report of the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh that both the said firms were fictitious and not genuine, disallowed the ITC against the purchases of paper worth ₹ 19,90,035/- and imposed penalties amounting to ₹ 79,602/- under Section 58 of the Act and ₹ 10,000/- under Section 60 of the Act. The appellant failed to challenge the verification report of the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh.

6. The Tribunal had recorded a categorical finding of fact that M/s R.S. Enterprises, Amritsar and Sunshine Overseas of Amritsar were fictitious and bogus. This finding of fact was not shown to be erroneous or perverse in any manner which may warrant interference by this Court. Consequently, no question of law much less substantial question of law arises in this appeal. Accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 20, 2015
gbs

(RAMENDRA JAIN)
JUDGE