IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.41 of 2015 (O&M)
Date of decision: 18.11.2015

M/s Sanjeev Stone Crushing Company
……Appellant.

State of Haryana and others
…..Respondents

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

1. Whether Reporters of 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. S.K.Chaudhary, Advocate for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana with
Shri Saurabh Mago, AAG, Haryana.

Ajay Kumar Mittal,J.

<u>CM No.17172 CII of 2015</u>

1. There is a delay of 411 days in filing the appeal. Notice of the application was given to the respondents. After hearing learned counsel for the parties and for the reasons stated in the application, the delay in filing the appeal is condoned. CM stands disposed of.

VATAP No.41 of 2015

2. This order shall dispose of VATAP Nos.41 and 42 of 2015 as according to the learned counsel for the parties, the issue involved in both these appeals is identical. However, the facts are being extracted from VATAP No.41 of 2015.

3. VATAP No.41 of 2015 has been preferred by the assessee-appellant under Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated 29.4.2014, 10.9.2012 and 28.2.2008, Annexures A.3, A.2 and A.1 passed by respondent Nos. 2, 3 and 4 respectively for the assessment year 2004-05, claiming following substantial questions of law:-

> "i) Whether in the facts and circumstances of the present case, the appellant is entitled to the benefit of input tax credit under section 8 of HVAT Act, 2003?
> ii) Whether before disallowing the input tax credit, the Assessing authority ought to have conducted the complete enquiry as prescribed under Section 8?
> iii) Whether the appellant should have been allowed to produce certificate in Form C4 in support of its claim of input tax credit in case the assessing authority has any doubt about invoice produced by the appellant?"

4. A few facts relevant for the decision of the controversy involved as narrated in the VATAP No.41 of 2015 may be noticed. The appellant-assessee is proprietorship concern. It is a dealer registered under the HVAT Act and also under the Central Sales Tax Act, 1956 (in short, "the CST Act"). It has been filing the prescribed quarterly returns and discharging its tax obligations in accordance therewith. It is engaged in the business of crushing stone builders into stone grit and dust which is used as other construction material. Proceedings for the assessment year in question

i.e. 2004-05 were initiated as the case of the appellant was selected for scrutiny being stone crusher. The assessee was communicated notice in Form No. N-2. The appellant put in appearance and filed written submissions in which preliminary objection with regard to question of limitation was raised. The appellant produced all the books of account as required. According to the appellant, the invoices produced by it were not taken into consideration by the assessing authority and the benefit of input credit was disallowed vide order dated 28.2.2008, Annexure A.1. According to the petitioner, if the assessing authority was not satisfied with the invoice, it could ask for certificate in Form C. Aggrieved by the order, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals) Faridabad [JETC(A)]. Vide order dated 10.9.2012, Annexure A.2, the appeal was dismissed by the JETC(A). Still not satisfied, the appellant filed appeal before the Tribunal. Vide order dated 29.4.2014, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

5. We have heard learned counsel for the parties.

6. It is not disputed by learned counsel for the parties that the issue involved in these appeals is covered by the decision of this Court in VATAP No.37 of 2014 (**M/s New Devi Grit Udyog, Raiseena, Gurgaon vs. State of Haryana and others)** decided on September 8, 2015, wherein after considering the relevant statutory provisions and the case law on the point, it was recorded as under:-

> "8.It would be advantageous to reproduce the relevant statutory provisions which read thus:-
>
> **<u>Section 2(w)</u>**
>
> "(w) "input tax" means the amount of tax paid to the State in

respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of section 8;"

Section 2(zl)

" 'tax invoice' means an invoice required to be issued according to the provisions of sub-section (2) of section 28 by a VAT dealer for sale of taxable goods to another VAT dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax in accordance with the provisions of section 8;"

Section 8(2)

"8(2) A tax invoice issued to a VAT dealer showing the tax charged to him on the sale of invoiced goods shall, subject to the provisions of subsection (3), be sufficient proof of the tax paid on such goods for the purpose of sub-section (1)."

Section 28(2)

"28(2) Every dealer required to furnish returns under sub-section (2) of section 14 shall, -

(a) in respect of every sale of goods, effected by him

(i) to any dealer;

(ii) to any other person on credit;

(iii) to any other person on cash, where the sale price of the goods exceed one hundred rupees or such other amount not exceeding five hundred rupees, as may be prescribed, compulsorily, otherwise, on demand by such person, issue to the purchaser, where he is a VAT dealer to whom the goods are sold for resale by him or for use by him in manufacture or processing of goods for sale, a tax invoice, otherwise a retail/other sale invoice, -

(A) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(B) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale; showing the prescribed particulars:

Provided that if the contract of sale requires that the goods be delivered over a period of time, he may issue a delivery note showing the prescribed particulars at the time of dispatch of the goods, every time such dispatch is made, and when the delivery of the goods is complete or a month closes in between, he shall issue a consolidated tax invoice or retail/other sale invoice, as the case may be, showing the prescribed particulars, in respect of the goods sold during the month or part thereof, as the case may be;

(b) maintain, in the prescribed manner, account of all sales not falling within clause (a);

(c) in respect of every dispatch of goods otherwise than by sale, issue a delivery note at the time of the dispatch showing the prescribed particulars; and

(d) preserve a carbon copy of every invoice or delivery note issued under clause (a) or clause (c) for a period of eight years following the close of the year when the sale was made and where some proceedings under this Act are pending, till the completion of such proceedings.

Rule 54(3)

"(3) An invoice or a delivery note shall at least contain the following particulars –

Tax invoice/Retail invoice/Sale invoice/Delivery Note

Serial Number: Date: DD:MM:YY

Time: HH:MM

Note: - Time is to be mentioned by stone crusher owners, quarry contractors/lessees in every case, and by other dealers in case the value of goods exceeds ten thousand rupees.

(i) Full name and address of the selling dealer/consignor with his TIN, if any

(ii) Nature of transaction - whether sale, consignment transfer or job work etc.

(iii) Name and address of the purchaser/ consignee (in case he is

a dealer registered under the Act, mention his
TIN)
(iv) Description of goods
(v) Quantity of goods
(vi) Value of goods with break-up according to rate of tax applicable (In case of delivery note, approx. value may be given and no break-up is necessary.)
(vii) Tax, where charged separately (Not compulsory when a delivery note is issued or an invoice is issued by a lump sum dealer, an unregistered dealer, or a VAT dealer making sale to a consumer.)
(viii) Vehicle number (Where the goods are carried in a vehicle.)
(ix) Name of the person carrying the goods (Where the goods are carried in a vehicle.)

Signature of the selling
dealer/consignor or his
authorized signatory.

Name in full and status"

9. A combined reading of the aforesaid provisions shows that under Rule 54(3) of the HVAT Rules, the buyer is required to produce the tax invoice, its name and TIN number entered on it. However, the question would be whether the purchaser can be penalized where the seller does not comply with the same. In our opinion, the answer would be in the negative. The non mentioning of the buyer's name or TIN number as it is issued by the seller cannot be taken to be fatal against the buyer and benefit of input tax credit declined to the buyer on that basis alone. The purpose of incorporating Rule 54 (3) of he HVAT Rules is to safeguard the interest of the revenue from non-genuine transactions. It is procedural in nature and does not confer any substantive right. In the event of non-mentioning of the name and TIN No. of the buyer, a heavy onus is cast on the said dealer to produce material to discharge the

said onus by producing other sufficient evidence to show that the transaction was genuine and it had made payment of VAT to the seller. Moreover, it is not within the control of the purchaser to ensure that the tax invoice contains his name and TIN No. as it is issued by the seller. Unless a mandatory duty is cast on the seller to issue tax invoice with such particulars, the purchasers cannot be penalized for no fault of theirs.

10. The Gujarat High Court in ***Vimal Enterprise'***s case (supra) [(1999) 3 SCC 422] while considering grant of Cenvat/Modvat credit, observed as under:-

> “18....If on facts, it is possible to find out that the transaction is genuine and bonafide transaction, the identity of the supplier is established, the document showing duty paid inputs is supported by the facts, and the records of the supplier show that the supplier has purchased duty paid goods before resale and passed on the credit of duty, there is no reason why the benefit should be denied. Once the object for which a provision is enacted is satisfied merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of modvat has been framed. The endeavour must be to ensure that the scheme is made effective and not frustrated. In other words, the goods , which have been subjected to duty when used as inputs for manufacture of final product, should not be made to bear duty once again as that would have a cascading effect not intended by legislature in so far as the ultimate consumer is concerned. Therefore, even approaching from the view point of ensuring that the object with which the provision has been enacted is satisfied, if the facts of the present case are tested, the answer would be that the petitioner was entitled to avail of the modvat credit, the petitioner having done all that was possible within its powers and nothing further remained to be done so far as the petitioner was concerned.'

11. Similarly, the Bombay High Court in ***Marmagoa Steel Limited's*** case (supra) [2005(192) ELT 82 (Bom.)] recorded thus:-

> "10. For availing the credit of duty, what is required to be established under Rule 57G is that the inputs received are infact duty paid. The procedure set out in Rule 57G of the Central Excise Rules is to ensure that the credit is taken on the basis of duty paid documents. The bill of entry is one such document set out in Rule 57G. The said rule does not require that the bill of entry should be in the name of the person claiming credit of duty. It is not in dispute that the goods imported and cleared on payment of duty by one person can be used as inputs and credit of duty can be claimed by another person by establishing that the imported duty paid goods have been received as inputs and that the importer has not taken credit of that duty. In the present case, it is established that the duty paid goods are received as inputs, however, the credit is denied on the ground that the Bill of entry is not endorsed in the name of the appellant. Rule 57G does not require that for taking credit of duty, the bill of entry should be endorsed in the name of the claimant. Counsel for the revenue could not point out any provision of law in the Act or the Rules regarding the endorsement of bills of entry. In the absence of any provision regarding endorsement on the bill of entry, the credit of duty cannot be denied on the ground that the bill of entry is not endorsed in the name of the claimant. As stated here above, what is required to be established for taking credit of duty is that the goods used as inputs are duty paid and that the credit of duty paid on the said goods has not been taken. In the facts of the present case, the evidence on record i.e. the bills of entry together with the certificates issued by excise authorities at Surat and Goa clearly show that the goods imported and cleared under the bills of entry on payment of duty were received and utilized by the appellant as inputs in its factory

and that the importer has not utilized the credit of duty paid on the said goods. Thus, the appellant has established that the inputs received under the bills of entry were duty paid and therefore, the authorities below were not justified in denying the credit of duty to the appellant. The two decisions relied upon by the Tribunal do not support the case of the revenue. In the case of Balmer Lawrie & Co. (supra), the issue was not relating to the endorsement on the bills of entry and therefore, the said decision is distinguishable on facts. Similarly, the decision of the tribunal in the case of Tata Iron and Steel Co. Limited (supra) is also distinguishable on facts as the said decision is based on erroneous concession made by the counsel for the appellant therein that in the case of Balmer Lawrie & Co., it is held that the Modvat credit is not available on the basis of endorsed copies of bills of entry."

12. In the present cases, the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in ***Babu Verghese's*** case (supra) [(1999) 3 SCC 422]. was different. The question involved therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term.

13. In such circumstances, we find that the matter requires to be remanded to the Assessing Officer who shall consider the matter afresh and shall not reject the tax invoice only on the ground that it does not contain the name of the buyer and its TIN number where the buyer is able to justify the genuineness of the transaction by producing evidence before him. Ordered

accordingly. Consequently, the impugned orders Annexures A.1, A.2, A.4 and A.7 are set aside. All the appeals stand disposed of as such.”

7. In view of the above, the appeals are disposed of in the same terms as in **M/s New Devi Grit Udyog, Raiseena, Gurgaon**'s case (supra).

(Ajay Kumar Mittal)
Judge

November 18, 2015
'gs'

(Ramendra Jain)
Judge