IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 233 of 2014 (O&M)

Date of Decision: 13.10.2015

M/s Kirpal Exports, Ludhiana

....Appellant.

Versus

Deputy Excise and Taxation Commissioner, Ludhiana and another

...Respondents.

1. Whether the 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?

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

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

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

RAMENDRA JAIN, J.

1. Delay of 192 days in filing the appeal is condoned.

2. This order shall dispose of two appeals bearing VATAP Nos. 233 and 234 of 2014 as according to learned counsel for the parties, common questions of law and facts are involved therein. For brevity, the facts are being taken from VATAP No. 233 of 2014.

3. VATAP No. 233 of 2014 has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the orders dated 27.2.2012 (Annexure A-3) and dated 24.8.2012 (Annexure A-4) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following

substantial questions of law:-

a) Whether the impugned orders passed by the ld. below authorities without taking into account the material submissions and against the statutory provisions of law is legally sustainable in the eyes of law?

b) Whether the act on the part of the ld. below authorities to pass the impugned orders in lack of jurisdiction is legally sustainable in the eyes of law?

c) Whether the impugned orders are legally sustainable in the eyes of law?

4. The appellant is carrying on the business of readymade garments. The appellant filed its returns for the Financial Year 2005-06 and annual statement in Form VAT-20, declaring the data of its sale and purchase. While scrutinizing VAT-20 Form, the Excise and Taxation Officer made an additional demand of ₹ 26,20,799/- with the observation that the appellant had sold the car for ₹ 6,24,342/- but did not include its value in the returns nor deposited the tax on the sale of fixed assets. Even export sales shown by the appellant were not genuine, because as per documents, the appellant had sold the goods on 25.11.2005 which were dispatched to foreign buyers by the exporters to whom the sale were made against 'H' Forms on 12.12.2005, whereas as per bill of lading, the goods were dispatched on 11.6.2006 i.e. in the next year. ICC data of the appellant also did not tally with the export sales mentioned in the 'H' Forms. The appellant also failed to explain and produce evidence including purchase vouchers in support of its ITC claim. The appellant had also tried to convert the taxable interstate sale of ₹ 2,85,996/- as export sale. Accordingly, respondent No.2-assessing

authority framed the assessment by creating an additional demand of ₹ 26,20,799/- vide order dated 20.11.2009 (Annexure A-1). Aggrieved with the said order dated 20.11.2009, creating additional demand of ₹ 26,20,799/-, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana, but remained unsuccessful and thus, preferred second appeal before the Tribunal, who too dismissed its appeal vide order dated 27.2.2012 (Annexure A-3). Thereafter, the application of the appellant for rectification of the aforesaid order dated 27.2.2012 (Annexure A-3) dismissing its appeal, was also rejected vide order dated 24.8.2012 (Annexure A-4) by the Tribunal. Still dissatisfied, the appellant has preferred the present appeal along with an application for condonation of delay of 192 days in filing the present appeal.

5. We have heard learned counsel for the parties and have perused the case file.

6. Learned counsel for the appellant submitted that the orders of the Tribunal dated 27.2.2012 (Annexure A-3) and dated 24.8.2012 (Annexure A-4) rejecting its appeal and application for rectification of the aforesaid order, are not legally sustainable in the eyes of law, being based on surmises and conjectures. It was further submitted that the Tribunal has acted in an arbitrary manner in upholding the orders of the the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana as well as the Excise and Taxation Officer-cum-Designated Officer, Ludhiana. The authorities below had failed to take into account that Form 'I' was required for export of goods and not 'H' Form. Form 'H' were produced by the appellant duly received against export of goods along with the bill of lading which was a sufficient proof that the goods

have been exported. The respondents also failed to comply with the provisions of Section 84 of the Act with regard to export before creating huge demand against the appellant and thus, impugned orders are liable to be set aside.

7. On the other hand, learned State counsel supported the orders passed by the authorities below and prayed for dismissal of the appeals.

8. After giving our thoughtful consideration to the above submissions of learned counsel for the parties, we feel that the interest of justice would be met, if both the cases are remanded back to the Tribunal to decide the same afresh after affording an opportunity to the appellant to raise all such possible legal pleas, because the impugned order dated 27.2.2012 (Annexure A-3) dismissing the appeal of the appellant, was passed ex parte, depriving the appellant of its legitimate right to put forward its case.

9. Further, the appellant was even not permitted to explain the time gap in between i.e. difference of dates shown in the dispatched dates. Perusal of the order, Annexure A-3, shows that it has made simply re-petition of the orders passed by the appellate authority as well as of the Excise and Taxation Officer-cum-Designated officer, dismissing the same without giving its own findings. When the appellant filed an application for rectification of the aforesaid order dated 27.2.2012 dismissing its appeal, in the interest of justice, the Tribunal should have afforded an opportunity to the appellant to put forward its case.

10. In view of the above, the appeals are allowed and the orders, Annexures A-3 and A-4, respectively, passed by the Tribunal are set aside. The matter is remanded back to the Tribunal with a direction

to pass a fresh and speaking order in accordance with law after affording an opportunity of hearing to the appellant. The appellant shall appear before the Tribunal on 15.12.2015.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

13.10.2015
Ashwani/gbs