IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 255 of 2014 (O&M)
Date of decision: 18.8.2015

M/s Eastman International

……Appellant

State of Punjab and another

…..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. K.S.Dhillon, Advocate for the appellant-assessee.

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

Ajay Kumar Mittal,J.

CM No.13884-CII of 2015

1. The documents Annexures A.4 to A.10 are allowed to be taken on record. CM stands disposed of.

VATAP No.255 of 2014

2. The assessee has preferred this appeal under Section 68 of the

Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the orders dated 29.10.2009, 26.11.2012 and 25.11.2013, Annexures A.1 to A.3 respectively passed by the authorities, claiming following substantial questions of law:-

> "i) Whether penalty is justified where the documents covering the goods are proper and genuine and intention is bonafide?
>
> ii) Whether mere minor discrepancy is enough to impose penalty where all the provisions were properly followed?
>
> iii) Whether the rejected goods were properly accounted for in the books of account as per the provisions of law?
>
> iv) Whether mere saving/avoiding of unnecessary expenses of transportation and incidental charges in this recession is an offence and liable for imposition of penalty?
>
> v) Whether it was compulsory upon the appellant to firstly reload rejected goods from M/s Dolphin Rubber Ludhiana and bring it to appellant's premises and thereafter again reload said goods from appellant's premises for sending it to Oswal Enterprises Jalandhar?
>
> vi) Whether the impugned orders of courts below are perverse, contrary to evidence and based upon misreading/misinterpretation of evidence/law and thus liable to be set aside?"

3. A few facts relevant for the decision of the controversy as narrated in the appeal may be noticed. The appellant is a registered dealer. It is engaged in the business of general order suppliers. During the course of business, the appellant sold goods i.e. raw rubber vide bill No.EVAT 91705 for ₹ 7,38,000/- plus VAT ₹ 29520/- totalling ₹ 767520 to M/s Oswal Enterprises, Jalandhar. The bill was covered with GR No.7741 dated 20.10.2009 of M/s Shitla Road Lines, Transport Nagar, Ludhiana. The goods were being transported in Vehicle No. PB-08U-9793 and the

documents covering the goods were proper and genuine as required under Section 51(2) of the PVAT Act. While the goods in question were being transported, the same were checked by Excise and Taxation Officer, Ludhiana and detained on the ground that a note was given on bill No. EVAT 91705 dated 20.10.2009 to the following effect:-

"Goods rejected and returned back."

The goods in question were originally supplied and delivered to M/s Dolphin Rubber Limited, Hambran, Ludhiana vide bill No.EVAT 91704 dated 20.10.2009 for ₹ 756000/- plus VAT ₹ 30240/- totalling ₹ 786240/-. The said bill was covered with GR No.7429 dated 20.10.2009 of D.D. Khosla Transport Pvt. Limited. The goods were transported in vehicle No.PB 10 CH 1416 on the same date i.e. 20.10.2009. Later on, when the Managing Director of M/s Dolphin Rubber Limited checked the goods, he asked the concerned person that since the same were not as per their specification, they be rejected and convey the message to the selling dealer. Moreover, he further ordered that while returning the goods, a note must be mentioned on bill No. EVAT 91704 and issue a debit note for accounts purposes. When the appellant was making arrangement to bring the goods back, another order of supply of similar quality and quantity was received by the appellant from M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. On receipt of order, the appellant decided that the goods as earlier rejected by M/s Dolphin Rubber Limited against bill No.EVAT 91704 and lying at its premises be supplied to M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. A new vehicle was hired and goods in question were got uploaded/reloaded from the premises of M/s Dolphin Rubber Limited, Ludhiana. Bill No.

EVAT 91705 already issued by the appellant was handed over to the person incharge/driver of the vehicle. The bill was also covered with GR No.7741 of M/s Shitla Road Lines, Ludhiana. The appellant in order to avoid incidental charges got reloaded the goods from the premises of M/s Dolphin Rubber Limited, Hambran, Ludhiana and the same were being transported to the premises of M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. Before the goods in question were transported from the business premises of M/s Dolphin Rubber Limited, Hambran, the Store Incharge recorded a note on bill No.EVAT 91705 dated 20.10.2009 inadvertently and under misconception. The entire position was explained to the Detaining Officer, enquiry officer and the appellate authority but in vain. The Assistant Excise and Taxation Commissioner imposed penalty vide order dated 29.10.2009, Annexure A.1 under Section 51(7)(b) of the PVAT Act of ₹ 2,30,256/-. The appeal filed by the assessee was dismissed by the Deputy Excise and Taxation Commissioner (Appeals) Ludhiana vide order dated 26.11.2012, Annexure A.2. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 25.11.2013, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the goods which were rejected by M/s Dolphin Rubber Limited, Hambran, Ludhiana and lying at its premises were sold and transported to M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. It was contended that in such circumstances, there was no attempt to evade tax.

6. Learned counsel for the respondents on the other hand

supported the impugned orders.

7. A perusal of the orders passed by the authorities below shows that after considering the entire material on record and the documents, it has been recorded that the documents accompanying the goods were not genuine. The goods which were intercepted by the detaining officer were meant for trade. The dealer had made an attempt to evade the payment of tax by transporting the goods by ingenuine documents. On EVAT No.91704 dated 20.10.2009 issued by the appellant in favour of M/s Dolphin Rubber Limited for ₹ 7,56,000/-, there was a mention that the goods were rejected. Invoice EVAT No.91705 of the same date used by the appellant favouring M/s Oswal Enterprises, Jalandhar also had a similar note that the goods rejected and return back. Though the quantity in both the bills was the same but the rates and amounts varied. It was concurrently concluded by all the authorities that the transaction was an attempt to evade tax on the part of the appellant. The Tribunal while affirming the findings recorded by the Assistant Excise and Taxation Commissioner and Deputy Excise and Taxation Commissioner (Appeals) recorded as under:-

> "As per the note recorded by M/s Dolphin Rubber Limited on invoice No. EVAT dated 20.10.2009 purportedly issued by M/s Eastman International, Ludhiana in favour of M/s Dolphin Rubber Limited, Hambran for ₹ 7,56,000/- the goods were rejected. On invoice No. EVAT 91705 dated 20.10.2009 used by M/s Eastman International, Ludhiana in favour of M/s Oswal Enterprises, Jalandhar also a note has been recorded that the goods rejected and return back". However, the quantity in both the bills is the same but the rates and amounts differ. According to the appellant-dealer, there is difference of 90 kg. in weight. To my mind, difference in weight to such an extent

would have not occurred, even if the goods were weighed on two different weighing machines. It does not stand to the logic that the Store Incharge namely Uday Partap of M/s Dolphin Rubber Limited, Ludhiana had inadvertently or under some misconception recorded the note regarding rejection of goods. Uday Partap being an employee, it was not difficult for the appellant to procure his affidavit. It does not sound well that the store keeper of M/s DRL, Hambran, Ludhiana had recorded the note of rejection on Bill No.91705 due to oversight. The AETC, Mobile Wing, Ludhiana in his order dated 29.10.2009 has observed as under:-

'On scrutiny of documents i.e. sale bill file,it is noticed that in the column description of goods, the firm described the place from where the goods were dispatched, it is either direct or the place from where the goods are loaded. In this case, both the bills from Ludhiana to Hambran and from Ludhiana to Jalandhar i.e. Bill No.704 and 705 are for the same date and loaded in two different vehicles. In Bill No.705, nowhere, it is mentioned that the goods will be/are loaded from Hambran rather it has been shown that the goods are dispatched direct from Ludhiana. Bill No.705 is only a covering document. The documents accompanying the goods are ingenuine. The goods are meant for trade. The dealer has made an attempt to evade the payment of tax by transporting the goods by documents which are already rejected. In the light of above penalty under Section 51(7)(b) of Punjab VAT Act, 2005 for ₹ 2,30,256/- has been imposed.'.

In my view, no exception can be taken to the above observations. Consequently, the penalty imposed by the Penalizing officer is affirmed and this appeal being devoid of any merit is dismissed."

8. The only attempt on the part of the learned counsel for the appellant is to reappraise the evidence. We do not find that the findings of

fact recorded by the authorities below are illegal or perverse in any manner. The view taken by them is a plausible view which cannot be faulted. No substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 18, 2015 **(Ramendra Jain)**
'gs' **Judge**