IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Appeal No.256 of 2014(O&M)
Date of decision: 11.8.2015

M/s Pioneer Electronics

……Appellant.

Union Territory of Chandigarh

…..Respondent

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. Avneesh Jhingan, Advocate for the appellant.

Mr. Sanjiv Ghai, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee-appellant has preferred this appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (as extended to Chandigarh) (in short, "the PVAT Act") against the order dated 1.10.2014, Annexure A.5 of the Value Added Tax Tribunal, Union Territory, Chandigarh (in short, "the Tribunal") in STA No.17 of 2012 dismissing its appeal, claiming following substantial questions of law:-

> "i) Whether in the facts and circumstances of the case, the imposition of penalty is sustainable in law?
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> ii) Whether in the facts and circumstances of the case, the orders Annexures A.3 and A.5 are non speaking orders?

iii) Whether in the facts and circumstances of the case, the penalty could be imposed on the appellant even when the purchasing dealers were registered dealers in State of Punjab and the only defect pointed out was that the declaration forms were not issued by the department to them?

iv) Whether in the facts and circumstances of the case, the penalty could be imposed without there being any additional material than the one which was there for framing assessment?

v) Whether in the facts and circumstances of the case, the penalty could be imposed in absence of any collusion between the seller and purchaser having been proved?

vi) Whether in the facts and circumstances of the case, the interest could be charged for the period prior to date of creation of the demand while rejecting the 'C' forms?

vii) Whether in the facts and circumstances of the case, orders Annexures A.2, A.3 and A.5 are sustainable in law?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a registered dealer under the PVAT Act and the Central Sales Tax Act, 1956 (in short, the "CST Act") It is carrying on the business of trading in electrical and electronics goods at Chandigarh. It filed the statutory returns as also the annual return for the assessment year 2005-06. It claimed certain sales made to registered dealer in the course of interstate sale. In support of its claim, declaration in Form 'C' as given by the purchaser was also produced. The Assessing authority finalized the assessment for the assessment year 2005-06. The assessing authority disallowed two 'C' Forms for sales made to M/s New Saini Electronic, Kurali and M/s Dhawan Video Mohali. The said forms were rejected on the ground that the Excise and

Taxation Department of Punjab had not issued these forms to the above said concerns. According to the appellant, during the assessment proceedings, a blank paper was got signed by the assessing authority from its partner on which later on his admission was recorded with regard to in-genuineness of the declaration forms. The appellant in order to avoid litigation deposited the deferential rate of tax. The assessing authority initiated interest and penalty proceedings. The appellant pleaded that for imposition of penalty some material more than what was there in the assessment proceedings should be there. The assessing authority charged interest and penalty vide order dated 2.12.2009, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the first appellate authority which was dismissed vide order dated 19.5.2014, Annexure A.3. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 1.10.2014, Annexure A.5, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee-appellant.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant submitted that the findings of non genuine 'C' forms can only be made for addition of taxable turnover but are not sufficient to levy penalty in the absence of any additional material or further enquiry. Reliance was placed on judgments in ***State of Haryana vs. Inalsa Limited and another***, (2011) 42 VST 192 (P&H), ***Pahar Chand & Sons vs. The State of Punjab,*** (1972) 30 STC 211 (P&H), ***Anantharam Veerasinghaiah & Co. vs. Commissioner of Income Tax,***A.P.(1980) 123 STC 457 (SC), ***CIT, Ahmedabad vs. Reliance Petroproducts Pvt. Limited,*** (2010) 35 PHT 575 (SC) and ***The State of Madras vs. S.G.Jayaraj Nadar***

& Sons, (1971) 28 STC 700 (SC).

5. On the other hand, learned counsel for the respondent supported the impugned order passed by the Tribunal.

6. A perusal of the interest and penalty order dated 23.6.2011, Annexure A.2 shows that the seller had paid incorrect rate of tax at the rate of 1% instead of 12.5% by producing bogus and ingenuine 'C' forms. No books of account were produced before the assessing authority to prove the genuineness and bonafide of the claim. The relevant portion of the order dated 23.6.2011, Annexure A.2 reads thus:-

> "There is a privity between the seller and the buyer when a sale is made against C form. The seller deposits tax at concessional rate of tax in respective quarter of the year concerned in which sale is made. In this case, based on the verification report received by the department and subsequently the detailed notice being issued to the taxable person regarding bogus C forms. The person failed to produce any document in reference to the genuineness or replacing the bogus C forms by genuine C forms during the proceeding of the assessment. Further the partner of the firm gave a written admission statement at the time of assessment as placed on the file that incorrect documents were produced with a view to evade tax. From the facts of the case, it is apparent that the seller had colluded with the buyer firm and paid incorrect rate of tax at the rate of 1% instead of 12.5% by producing bogus and ingenuine C forms the written admission statement given by the partner of the firm and placed on the file clearly implicate the seller person. Further, the taxable person also failed to produce books of accounts nor produced any documents before the assessing authority to prove the genuineness and bonafide of his claim as the burden of proof squarely lay on him. It was the duty of the seller firm to produce genuine C forms when a due opportunity

was afforded to him through a detailed letter confronting the person of the facts by the then assessing authority."

7. The Deputy Excise and Taxation Commissioner (Appeals), UT, Chandigarh upheld the penalty and interest order. However, before the Tribunal, the appellant only agitated against the penalty. The Tribunal vide order dated 1.10.2014, Annexure A.5 held that since 'C' Forms were not genuine, the penalty was imposed in accordance with the rules by the assessing authority and dismissed the appeal. Learned counsel for the appellant has not referred to any cogent and convincing evidence or material on record to controvert the findings recorded by the authorities below. No explanation much less satisfactory explanation was given by the learned counsel for the appellant for submitting non-genuine 'C' Forms. The proposition of law propounded in the judgments cited by the learned counsel for the appellant is well recognized, but they being based on individual fact situation involved therein do not come to the rescue of the appellant keeping in view the facts and circumstances of the present case. Consequently, the appellant cannot derive any advantage from the said decisions. As a result, finding no merit in the appeal, the same is hereby dismissed.

8. The original record be returned to the learned counsel for the respondent under proper receipt.

(Ajay Kumar Mittal)
Judge

August 11, 2015 **(Ramendra Jain)**
Judge

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