**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

U.V.R. No.7 of 2010 (O&M)
Date of decision: 31.8.2016

M/s Fertichem Cotspin Ltd.

.....Petitioner

vs.

The State of Punjab and another

....Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

Rajesh Bindal, J.

The assessee has filed the present petition raising the following substantial questions of law arising out of the order dated 5.3.2009 passed by the VAT Tribunal, Punjab (for short, the Tribunal') in Revision No. 1 & 2 of 2008-09:-

"(i) Whether the Ld. Tribunal has erred in law in declaring the sale of DEPB licenses, made by Chandigarh Head Office of Petitioner outside the Punjab State, as sales made in Punjab State merely because the DEPB licences were received on account of sale proceeds made for the goods manufactured in Punjab State?

If the answer to the said Question is in negative:

(ii) Whether such proceeds of sales on account of DEPB licences, earned on account of sales of cotton yarn exported outside India, is to be set off, from the exemption limit, given in Exemption Certificate issued under the PGST (D&E) Rules, 1991?

(iii) Whether on the facts and circumstances of the case, it was a case of mere escaped turnover and on that basis pointed out by the Audit, no Revisional proceedings could have been initiated?

(iv) Whether the Revisional proceedings initiated after the expiry of three years from the last date of filing of the return as provided in Section 11(3) of the PGST Act 1948 are liable to be declared void being without jurisdiction?"

Learned counsel for the petitioner submitted that the petitioner is a company having its registered office at Chandigarh and its factory at Dera Bassi (Punjab). The assessment of the petitioner-company for the year 2002-03 was framed by the assessing authority vide assessment order dated 28.9.2004. Whatever amount of tax was assessed, the same was adjusted against the limit, for which the petitioner had been granted exemption from payment of tax. During the year in question, the petitioner had received DEPB, which is a tradable commodity on 16.8.2001 at Chandigarh office. The petitioner-company even received import/export licence at the Chandigarh address of the petitioner-company. The DEPB, which is a tradable commodity was sold by the petitioner from its Chandigarh office to the buyers located at Calcutta and Delhi and even the payment was also received at Chandigarh. The goods never entered in the State of Punjab. Despite the fact that the authorities under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), had no jurisdiction to assess the transaction of sale of DEPB from Chandigarh office of the petitioner-company to the buyers located in different States, not in Punjab, suo moto notice under Section 21 of the Act was issued on 8.1.2008 seeking to reassess the tax on the same under the Act. It was duly replied to by the petitioner raising the issue of jurisdiction of the Commissioner to bring the transaction to tax, inter alia, on the ground that the goods were not taxable under the provisions of the Act and secondly, the transaction was in the course of inter-state trade from Chandigarh. Despite these facts the revisional authority ignoring the provisions of the Act as well as the settled principles of law, levied the tax. The order was upheld by the Tribunal in revision filed by the petitioner.

The submission of learned counsel for the petitioner was that in view of Section 29 of the Act, the State had jurisdiction to levy tax only on the sale or purchase of goods, which takes place within the State of Punjab. The situs of sale in the case in hand being from Chandigarh to the States situated outside the State of Punjab, the transaction was not liable to tax, especially treating it to be local sale within the State of Punjab, whereas the material on record clearly suggested that it was a transaction in the course of inter-state trade, as all the buyers were located in different States outside the State of Punjab. He further submitted that despite the contention regarding the transaction being in the course of inter-state trade from Chandigarh and the buyers being outside the State of Punjab, neither the revisional authority nor the Tribunal has considered this aspect. No notice under the Central Sales Tax Act, 1956 had been issued.

On the other hand, learned counsel for the State submitted that transaction had rightly been taxed, as admittedly DEPB is a tradable commodity leviable to tax. The petitioner-company merely had its registered office at Chandigarh, DEPB and the import licence, which were sold by it, were received as a result of goods manufactured and exported from the facility available in the State of Punjab. The petitioner is not a registered dealer at Chandigarh and it had not paid any tax on the transaction anywhere. However, he did not dispute the fact that the aspect as to whether the goods were sold to the buyers located outside the State of Punjab has not been examined by any of the authority and further that the notice for revision was issued under the provisions of the Act only.

After hearing learned counsel for the parties, we are of the view that the specific finding was required to be recorded by the revisional authority as well as the Tribunal on the issue raised by the petitioner that the goods in question were sold by the petitioner from its Chandigarh office to the buyers located in the States outside State of Punjab. It is relevant for the purpose as to whether the Commissioner could get jurisdiction to assess the transaction under the Act. It is not in dispute that no notice had been issued to the petitioner for seeking to revise the order under the Central Sales Tax Act, 1956.

Considering the aforesaid aspects, the impugned orders passed by the authorities are set aside. The matter is remitted back to the revisional authority for recording finding as regards the buyers of the DEPB sold by the petitioner from its Chandigarh office and thereafter examine the consequence thereof. The revisional authority shall issue notice to the petitioner for appearance in the month of October, 2016.

The revision is disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

31.8.2016
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No