IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 134 of 2012

Date of Decision: 27.1.2016

M/s Balaji Trading Company, Rewari

....Appellant.

Versus

The State of Haryana 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? **YES**
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Sandeep Goyal, Advocate for the appellant.

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

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos. 134 and 148 of 2012 as it was not disputed by learned counsel for the parties that the issues involved therein are identical. For brevity, the facts are being taken from VATAP No. 134 of 2012.

2. VATAP No. 134 of 2012 has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 11.4.2012 (Annexure A-11) passed by the Haryana Tax Tribunal, Haryana Punjab (hereinafter referred to as "the Tribunal"). The appeal was admitted by this Court vide order dated 28.1.2014 for determination of the following substantial questions of

law:-

1. Whether the goods in question purchased from NAFED, a Govt. of India undertaking would have remained unaccounted and there could have been an attempt to evade the tax on the part of the appellant where the payments are made in advance through bank channels?
2. Whether on the facts and circumstances of the case, the ld. Tribunal was justified in upholding the order of Ld. AETO on the basis on the statement of driver in the light of judgment of Krish Pack 28 PHT 27 of this Court?
3. Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in holding that the documents produced by the appellant were manipulated even though no enquiry had been conducted by AETO about the genuineness of the documents as held by the Tribunal?

3. VATAP No. 148 of 2012 has been admitted for determination of questions No.1 to 3 as reproduced above and also for questions No.4 and 5 which are as under:-

4. Whether on the facts and circumstances of the case, the finding recorded by the Ld. Tribunal are perverse in as much as the same are contrary to the facts of the case?
5. Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty

levied under Section 37(6) of the HGST Act even though the transaction in question would be an inter-state sale as recorded by the AETO for which the provisions of CST Act have not been invoked?

4. The appellant-dealer is engaged in the business of sale and purchase of foodgrains on intra-state as well as inter-state basis. It regularly makes purchases of mustard seed from National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), a Government of India Undertaking. All the payments made to NAFED and received from the customers were through banking channels. The appellant made purchase of consignment of goods containing 340 bags from NAFED vide Delivery Order No. 1061 for which the payment was made in advance through bank drafts. The delivery was made by NAFED under gatepass dated 28.1.2003 (Annexure A-1). After the goods were being loaded in vehicle No. HR-47A-1477, the same were weighed from the nearby Dharamkanta vide weighment slip dated 5.2.2004 (Annexure A-2). Since the goods were sold on interstate basis to Calcutta buyers, the appellant was required to issue an invoice and Form ST-38 which could have been issued after the receipt of invoice from the NAFED. The NAFED had issued the invoices at 8.20 PM on 28.1.2003 (Annexure A-3). When the said vehicle was waiting on the roadside for the documents required for carrying the goods, the same were checked and detained by the Assistant Excise and Taxation Officer (AETO). Accordingly, a show cause notice dated 28.1.2003 (Annexure A-4) was issued to the appellant. In response thereto, the appellant made written submissions dated 27.2.2003 (Annexure A-5). The AETO vide order dated 14.3.2003 (Annexure A-6) imposed a penalty of ₹ 1,25,000/-

holding that there was an attempt to evade tax by relying on the statement of the driver. The appellant submitted the documents (Annexure P-7 Colly) accompanying the goods, i.e. invoice, GR, ST 38 and way bill. Against the order, Annexure A-6, the appellant filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) [JETC(A)] who vide order dated 25.11.2003 (Annexure A-8) upheld the order of the AETO and dismissed the appeal. Being dissatisfied, the appellant filed an appeal along with stay application (Annexure P-9 Colly) before the Tribunal. The appellant also produced the ledger account (Annexure A-10) before the Tribunal. However, the Tribunal vide order dated 11.4.2012 (Annexure A-11) dismissed the appeal holding that the statement of the driver was sufficient to prove that there was an attempt to evade tax. Hence, the present appeals.

5. Learned counsel for the appellant submitted that the Tribunal had upheld the orders of AETO and JETC(A) primarily on the ground that the statement of the driver which was recorded by the authorities at the time of checking of goods pointed that an attempt to evade tax was there. Relying upon the judgment of this Court in **Krish Pack Industries v. State of Punjab (2006) 28 PHT 27 (P&H)**, the action of the authorities imposing the penalty only on the basis of the statement of the driver was assailed. It was urged by the learned counsel for the appellant-dealer that the transaction had taken place with the NAFED which is a Government organization and reference was made to Annexure A-3 appended with the appeal to show the bonafide of the transaction.

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

appeals.

7. The Tribunal had adjudicated primarily by observing that no evidence was produced by the appellant to controvert the orders of the AETO and JETC(A). Further, the Tribunal noticed that there was nothing on record to show that the driver was forced to make a particular statement which cannot be brushed aside and disbelieved. It was recorded from these facts and circumstances that there was an attempt to evade the tax on the part of the appellant.

8. The appellant relies upon Annexure A-3, i.e., the invoice and challan outward to substantiate that the transaction with the Government organization NAFED was bonafide and genuine. The Tribunal has not looked into the entire documents to record a finding that any attempt of evasion was made or that the documents were not genuine and had merely gone by the alleged admission of the driver. In our opinion, the order of the Tribunal cannot be sustained as the Tribunal was required to examine the entire material on record before concluding whether there was any attempt to evade tax on the part of the dealer.

9. In view of the above, the appeals are allowed and the impugned orders 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.

(AJAY KUMAR MITTAL)
JUDGE

January 27, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**