IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 13 of 2016 (O&M)

Date of Decision: 27.4.2016

The Batala Co-operative Sugar Mill Ltd., Batala

....Appellant.

Versus

State of Punjab and others

...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 MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: None.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos. 13 and 14 of 2016 as the issue involved in both the appeals is identical. For brevity, the facts are being extracted from VATAP No. 13 of 2016.

2. An application bearing CM No. 4239-CII of 2016 has been filed under Section 149 of the Code of Civil Procedure for condonation of delay in payment of shortfall in the court fee. A perusal of the application shows that the deficiency in court fee has been made good. Accordingly, the application is allowed and the delay, if any, in making good the deficiency in court fee, is condoned.

3. VATAP No. 13 of 2016 has been filed by the assessee under

Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 8.10.2015 (Annexure A-3) passed by the Value Added Tax Tribunal, Punjab , Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No. 32 of 2015, for the assessment year 2012-13. claiming the following substantial questions of law:-

(i) Whether in the facts and in the circumstances of the case the orders (Annexure A-1), (Annexure A-2) and (Annexure A-3) are legally sustainable in law?

(ii) Whether in the facts and in the circumstances of the case, the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Notified Authority Cum Excise and Taxation Officer as upheld by the Deputy Excise and Taxation Commissioner (Appeals) Amritsar more so by following the judgment which is still a matter under challenge before the Hon'ble Supreme Court of India?

(iii) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Notified Authority Cum Excise and Taxation Officer as upheld by the Deputy Excise and Taxation Commissioner (Appeals) Amritsar has grossly erred in denying the input tax credit on the purchase tax assessed/paid by the appellant as per order of assessment

(Annexure A-1)?

4. Put shortly, the relevant facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is running a sugar mill and is engaged in the business of purchasing of sugarcane from its members who are farmers and tillers of land. It is having TIN No. 03371068450. It filed its quarterly returns and also the annual return in VAT-20 for the year under consideration. The case of the appellant was taken up for scrutiny under Section 29(2) of the Act by issuing a notice. The Assessing Authority-respondent No.4 completed the assessment vide order dated 10.7.2014 (Annexure A-1) and levied purchase tax at the rate of 3.3% of the value of purchase price at ₹ 28,98,93,570/- which comprised of purchase price of ₹ 19,97,09,540/- being the Statutory Minimum Price fixed by the Government of India for the year under consideration and ₹ 9,01,84,031/- paid by the appellant on the directions of the State of Punjab. Thus, respondent No.4 had added ₹ 9,01,84,031/- which was paid on the direction of the State Government for calculating the purchase tax liability of the appellant. Further, the gross purchases as declared by the appellant amounted to ₹ 23,55,58,750/- out of which ₹ 1,81,10,238/- were inter-state purchases and ₹ 1,49,28,511/- were purchases of tax free goods. Besides this, the Assessing Authority had admitted availability of Input Tax Credit (ITC) at ₹ 1,05,59,403/- yet allowed the ITC at ₹ 9,53,516/-. The Assessing Officer had created an additional demand of ₹ 38,67,222/- while completing the assessment. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), who vide order dated 30.9.2014 (Annexure A-2) rejected the appeal. Against the order, Annexure A-2, the appellant

filed an appeal before the Tribunal. The Tribunal vide order dated 8.10.2015 (Annexure A-3) upheld the orders, Annexure A-1 and A-2 and dismissed the appeal following the judgment of this Court in **VATAP No. 176 of 2013 (M/s AB Sugars Ltd. v. State of Punjab and another) decided on 15.7.2015**. Hence, the present appeals.

5. After examining the record, we find that the matter is no longer *res integra.* The issue involved in these appeals stands concluded against the appellant by this Court in **M/s AB Sugars Ltd's case (supra)**. The following substantial questions of law were considered by this Court therein:-

> "i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in ignoring the judgment of M/s Gobind Sugar Mills and following the judgment of M/s Jagatjit Sugar Mills case despite the fact that the issue and facts in Govind Sugar Mills case are almost identical to the issues and facts of the present case?
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> ii) Whether in the facts and circumstances of the case, the appellant is liable to pay tax on the purchase of sugarcane under the provisions of Punjab General Sales Tax Act, 1948, when the Punjab Sugarcane (Regulation of Purchase & Supply) Act, 1953 is in force which is a special Act?"

Answering the said substantial questions against the assessee, it was held as under :-

"10. We, therefore, cannot take a view different from the one taken by the Supreme Court in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in Gobind Sugar Mills Ltd. v. State of Bihar (supra) as in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) the Supreme Court considered the very provisions that fall for our consideration. In Gobind Sugar Mills Ltd. v. State of Bihar (supra) different enactments fell for the consideration of the Supreme Court.

11. This is not even a case where the enactments considered in Gobind Sugar Mills Ltd. v. State of Bihar (supra) were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for consideration in Gobind Sugar Mills Ltd. v. State of Bihar (supra) expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of

expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-

> "Statement of Objects and Reasons- "With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books" (vide

Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630)."

12. Faced with this, Mr. Goel submitted that in any event in view of Article 266 of the Constitution of India the amounts collected under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 would be transferred to the consolidated fund of India and the enactments thereafter cannot direct the manner in which the same is to be utilized. He further submitted that once the amounts are credited to the consolidated fund of India, the Act cannot say how it is to be utilized. Only the legislature can do so.

Even assuming this to be so we do not see how it can make a difference. The legislature has imposed the tax. The amounts collected may well be available to the legislature to be spent for the purposes mentioned therein and in the statement of objects and reasons. These are aspects which can be gone into only by the Supreme Court and not by this Court for accepting these submissions would in effect result in this Court holding that the judgment of the Supreme Court in Jagatjit Sugar Mill's case (supra) is not good law.

13. Considering the view taken by us on Mr. Goyal's submission, it is not necessary to consider Mr. Jain's further submission that the appellant has infact challenged the validity of the Punjab General Sales

> Tax Act, 1948 and that such a challenge could not have been taken before the authorities.
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> 14. In the circumstances, the questions of law, are answered against the appellant. The appeal is accordingly dismissed."

6. In view of the above, the present appeals are dismissed in terms of the order passed in **M/s AB Sugars Ltd's case (supra)**.

(AJAY KUMAR MITTAL)
JUDGE

April 27, 2016
gbs

(RAJ RAHUL GARG)
JUDGE