IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 18 of 2016 (O&M)

Date of Decision: 16.3.2016

The State of Punjab and others

....Appellants.

Versus

M/s Om Shanti Steel Industries, Mandi Gobindgarh

...Respondent.

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: Mr. Jagmohan Bansal, Additional Advocate General, Punjab, for the appellants.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the State of Punjab under Section 68 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) against the order dated 1.12.2015 (Annexure A-3) passed by the Chairman, Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as “the Tribunal”) in VAT Appeal No. 219 of 2015, claiming the following substantial questions of law:-

(i) Whether the order passed by the Ld. VAT Tribunal is sustainable in law?

(ii) Whether the order passed by the Ld. VAT Tribunal is sustainable in law when in the present case, the respondent had intentionally made an attempt to evade the tax by adopting the modus operandi as discussed in the foregoing paragraphs?

(iii) Whether the Ld. Tribunal had rightly allowed the appeal of the Respondent when an attempt to evade the tax is proved on the basis of facts and documents available on record?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. It is mandatory for every taxable person under Section 51(2) of the Act to cover the transactions of sale and purchase, whether inter-state or intra state sale with goods receipt, a trip sheet or a log book, as the case may be, and a sale invoice or bill or cash memo or delivery challans containing such particulars, as may be prescribed in respect of such goods meant for the purpose of business. During the course of checking under Section 51(2) of the Act, the Excise and Taxation Officer, Mobile Wing, Bathinda, intercepted vehicle bearing registration No. HR-57-4097 loaded with TMT Bar from Mandi Gobindgarh to Jalalabad. On asking, the driver of the said vehicle had produced the following documents before the Detaining Officer:-

(i) Invoice No. 19 dated 7.5.2013 issued by M/s Om Shanti Steel Industries, Mandi Gobindgarh, in favour of M/s Vikram Enterprises, Jalalabad for 3910 Kgs of TMT Bars amounting to ₹ 1,68,245/- including VAT charged.

(ii) GR No. 12849 of Khanna Calcutta Transport

Co. GT Road, Khanna.

(iii) Invoice No. 786 dated 7.5.2013 issued by M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan & Sons, Jalalabad, in respect of 6080 Kgs of TMT Bars amounting to ₹ 2,64,809/- including excise duty and VAT.

(iv) GR No. 12850 dated 7.5.2015 of Khanna Calcutta Transport Co., GT Road, Khanna, and

(v) Self generated E-trip slip No. XXXIV-D (Intra State slip) covering the goods against invoice No. 786.

3. According to the appellants, the taxable person had not issued excise invoice in respect of 3910 Kgs of TMT Bar nor any information by way of e-trip as required under Rule 64-B of the Punjab Value Added Tax Rules was furnished. Accordingly, the goods were detained and notice was issued. However, the goods were got released on furnishing of bank guarantees of ₹ 37,875/- and ₹ 12,625/- totalling ₹ 50,500/-. Appellant No.3 vide order dated 16.5.2013 (Annexure A-1) imposed the penalty of ₹ 50,500/- under Section 51(7)(b) of the Act. Feeling aggrieved, the respondent filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) who vide order dated 27.10.2014 (Annexure A-2) upheld the order, Annexure A-1, and dismissed the appeal. Against the order, Annexure A-2, the respondent filed an appeal before the Tribunal. The Tribunal vide order dated 1.12.2015 (Annexure A-3) allowed the appeal and deleted the penalty of ₹ 50,500/-. Hence, the present appeal by the appellants.

4. After hearing learned counsel for the appellants, we do not

find any merit in the appeal.

5. The Tribunal had recorded that two consignments, i.e., one issued vide invoice No. 19, dated 7.5.2013 for 3.910 MT from Mandi Gobindgarh to Jalalabad and the other issued vide invoice No. 786 dated 7.5.2013 of M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan & sons, Jalalabad for 6.080 MT were in possession of the driver of the truck bearing No. HR-57-4097. Further, it was held that GR No. 12849 related to the transporting of the goods by the assessee. However, to show the bonafides, he had produced the purchase bill of 3.910 MT from M/s Aar Kay Industries in his favour even though there was no requirement of law to produce the same. Even the wrong fact was recorded by the Assistant Excise and Taxation Commissioner that the books of account were not produced before the Excise and Taxation Officer. The essential requirement that the bill and G.R. Should accompany the goods at the time of its transport/movement of the goods had been fulfilled. If there was any doubt about the sale of the TMT bars by M/s Aar Kay Industries to the assessee then the notice of enquiry could have been issued to the said selling firm or its business premises could have been inspected but this factor could not be attributed to the assessee. Even the sale voucher issued by the assessee to Vikram Enterprises was produced before the Designated Officer and this fact is duly mentioned in the order. In view of the above, it appeared that the goods carried by the assessee from Mandi Gobindgarh to Jalalabad through the truck were covered by the proper and genuine documents. The confusion was created on account of the fact that these were two consignments and the Designated Officer doubted that the bill issued by the assessee in favour of Vikram

Enterprises was fictitious. It was further observed by the Tribunal that the said doubt was just a camouflage in order to pass incorrect order of penalty. The relevant findings recorded by the Tribunal read thus:-

> "After deliberating over the arguments raised by the rival parties, I find merit in the contentions raised by the counsel for the appellant. The driver of the truck bearing No. HR-57-4097 was in possession of two consignments; one issued vide invoice No. 19, dated 7.5.2013 for 3.910 MT from Mandi Gobindgarh to Jalalabad. The other transaction was under invoice No. 786 dated 7.5.2013 of M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan & sons, Jalalabad for 6.080 MT. The GR No. 12849 related to the transporting of the goods by the appellant. There was no requirement of law to produce the purchase bill of the goods from M/s Aar Kay Industries, Mandi Gobindgarh to the appellant, yet in order to prove all bonafides, produced the purchase bill of 3.910 MT from M/s Aar Kay Industries in his favour. The Assistant Excise and Taxation Commissioner has recorded a wrong fact that "the books of account were not produced before the Excise and Taxation Officer. The invoice of e-trip was not produced relating to the present consignment. The selling roller mill had issued Bill No. 787 for his own sale to another firm and bill No. 788 to the present appellant. It seems that bill No. 788 was

issued after detention of the goods. But these facts apparently are not correct. The essential requirement that the bill and G.R. Should accompany the goods at the time of its transport/movement of the goods has been fulfilled. If the authorities had doubted about the sale of the TMT bars by M/s Aar Kay Industries to the appellant then the notice of enquiry could have been issued to the said selling firm or his business premises could have been inspected but this factor could not be attributed to the appellant. The law does not require that the purchase voucher as issued by M/s Aar Kay Industries to the appellant should also accompany the goods. The sale voucher is issued by the appellant to Vikram Enterprises was produced before the Designated Officer which also finds mention in the order.

All this goes to show that the goods carried by the appellant from Mandi Gobindgarh to Jalalabad through the truck were covered by the proper and genuine documents. The confusion was created on account of the fact that these were two consignments and the Designated Officer doubted that the bill issued by the appellant in favour of Vikram Enterprises was fictitious. This doubt to my mind was just a camouflage in order to pass incorrect order of penalty. Having examined the orders passed by the authorities, the same are not correct and need to be set aside.

Resultantly, the appeal is accepted, impugned order is set aside and the order of penalty is quashed."

6. The Tribunal on appreciation of material on record had deleted the penalty of ₹ 50,500/- imposed by Assistant Excise and Taxation Officer. Learned State counsel was not able to demonstrate that the approach of the Tribunal was erroneous or perverse or that the findings recorded were based on misreading or misappreciation of evidence on record. The view of the Tribunal is a plausible view and deletion of the aforesaid penalty could not be faulted.

7. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 16, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**