IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Appeal No.19 of 2016(O&M)
Date of decision: 28.07.2016

M/s HCL Infosystems Ltd. .. Appellant
vs.
The State of Punjab .. Respondent

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

Present:- Mr. Avneesh Jhingan, Advocate, for the appellant.
Mr. Jagmohan Bansal, Addl. A.G., Punjab

Rajesh Bindal, J.

This order shall dispose of two appeals bearing VAT Appeal Nos. 19 and 20 of 2016.

The facts have been taken from VAT Appeal No.19 of 2016. In this appeal, the appellant has raised the following substantial questions of law:-

"i) Whether the penalizing officer under Section 51(7)(b) of the Act has the jurisdiction to determine the issues on which the matter was remanded by the Tribunal?

ii) Whether in the facts and circumstances of the case, the Tribunal could have remanded the matter back to the penalizing officer to answer the questions which fall within the ambit of the regular assessing authority?

iii) Whether in the facts and circumstances of the case, the Tribunal after coming to the conclusion that the questions involved in the case were regarding nature of transaction and regarding sale or right to use, still could have continued the proceedings under Section 51 of the PVAT Act by remanding the matter back?

iv) Whether in the facts and circumstances of the case, Section 51 of the PVAT Act could have been invoked in the present case when the transaction was voluntary reported by the appellant at Information Collection

Centre and no element of tax was involved or payable?

v) Whether in the facts and circumstances of the case, orders of the lower authorities, Annexures A-2, A-3 and A-6 are sustainable in law, as no attempt to evade the tax has been established and no defect in the accompanying documents have been pointed out?

The facts of the appeal, in brief, are that the appellant entered into a contract as Turnkey Hardware & Service Provider with Punjab ICT Education Society(PICTES) under the department of School Education, Government of Punjab. As per the contract, certain computers were to be provided by the appellant to different schools, on lease, maintenance and transfer basis for a period of five years. The consignment of the computers was supplied through the trucks from Uttrakhand to Jalandhar, and on the way at Information Collection Centre (Imports) Shambhu the goods were declared but still penalty of ₹ 38,77,337/- was levied on the appellant opining that the documents were not genuine and proper.

The appeal of the appellant was dismissed by the Deputy Excise and Taxation Commissioner(Appeals) -cum-Joint Director(investigation), Patiala. In further appeal, the VAT Tribunal Punjab set-aside the orders passed by the authorities below and remitted the matter back to the Assistant Excise and Taxation Commissioner, Shamboo (Export) for fresh decision after answering the issues as noticed in the order passed by the Tribunal.

Learned counsel for the appellant, while referring to the judgment of Hon'ble the Supreme Court in 20th ***Century Finance Corporation Ltd. and another vs. State of Maharashtra, AIR 2000 (SC) 2436*** submitted that the transaction in the present case being during the course of interstate trade and commerce, no tax was leviable in the State of Punjab. The consignment was accompanied with all the requisite documents. The import of goods into the State of Punjab was declared at the check post, voluntarily. The officer posted at the check post had no jurisdiction to go into the nature of transaction to opine that it was not accompanied by proper documents and levy penalty. He further submitted that such a jurisdiction was with the regular assessing authority. The proceedings under Section 51 of the PVAT Act are summary in nature. In support of the plea, reliance was placed upon ***M/s Thyssen Krupp Elevator (India) Pvt. Ltd. vs. State of Punjab and another (2012) 41 PHT 224(P&H), and Devi Dass Gopal Krishan Ltd., Moga vs. State of Punjab (2009) 33 PHT 413 (P&H).***

On the other hand, learned counsel for the respondent submitted that the contract for supply of computers, maintenance of hardware was entered into by M/s HCL Infosystems Ltd. Mohali. At the time of import of goods, TIN number of the Mohali Dealer was not furnished. The appellant should have transferred the goods to Mohali and thereafter used the same for the purpose of the execution of the contract entered into with Punjab ICT Education Society(PICTES). As there was an attempt to evade the tax, penalty was imposed. He further submitted that in the invoice produced at the check post even Central Sales Tax had not been charged. The proposition of law that nature of transaction cannot be gone into by the Officer at the check post was not disputed by learned counsel for the respondent.

In response, learned counsel for the appellant submitted that as per contract, the goods were being transferred from the State of Uttrakhand to Punjab for right to use. It was not a sale. This was so mentioned in the invoice. The amount was shown only for the purpose of octroi and insurance, hence, no tax was chargeable.

We have heard learned counsel for the parties and perused the paper book.

There is no dispute on the proposition of law that the nature of transaction cannot be gone into by the Officer at the check post. It is the job of the regular assessing authority. Number of judgments have been cited by learned counsel for the appellant on that issue, which could not be disputed. The Tribunal while accepting the appeal filed by the appellant, recorded that following issues, arise for consideration:-

"1. Whether the invoice issued by the company was as per rules of procedure.

2. Whether the invoice issued by the company was a sale in favour of the schools or conferred a right to use only and it does not amount to sale.

3. Whether the transfer of goods is an interstate sale or stock transfer by the appellant to the THSP not subject to taxability by the State, where the goods were to be installed.

4. Whether there is an envolvement of tax of Punjab State.

5. Whether the constitution of THSP and the appellant is the same and whether the goods were sent as stock transfer under the orders of the head office."

A perusal of the aforesaid issues, shows that issue is regarding determination of nature of transactions. The proceedings under Section 51 of the VAT Act are summary in nature. The officer at the check post can not determine the nature of transaction, that being the job of the regular assessing authority. Accordingly, the proceedings initiated for levy penalty under Section 51 of the VAT Act are quashed. Consequently, all the orders are set aside. However, the same will not debar the appropriate Assessing Authority to determine the nature of transaction in proper proceedings. The questions of law are answered accordingly.

Disposed of.

(Rajesh Bindal)
Judge

28.07.2016
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No