

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 3 of 2016 (O&M)

Date of Decision: 27.1.2016

M/s Sahib Steel Industries, Mandi Gobindgarh

....Appellant.

Versus

State of Punjab

...Respondent.

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

PRESENT: Mr. Kumar Vishav Aggarwal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 26 days in refiling the appeal is condoned.
2. This appeal 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 13.8.2015 (Annexure P-6) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

- i) Whether the order passed by the Ld. Tribunal is not perverse, as same has been passed without any evidence on record?
- ii) Whether enquiry officer is not required to take any action against the firm who is saying that they have sold the goods without bill?
- iii) Whether the version/statement of driver can be believed? If yes, then whether same is upto

satisfaction of detaining officer?

- iv) Whether books/bills and documents have duly been verified by the authorities, before imposing any penalty?
- v) Whether the impugned order is in violation of rules of natural justice and is otherwise sustainable in law?

3. Briefly stated, the facts for adjudication of the present appeal as narrated therein are that the appellant sold the Iron Goods (MS Bar) to M/s Sahib Steel International, Mandi Gobindgarh on 1.3.2007 vide invoice No.488 dated 1.3.2007 (Annexure P-1) for ₹ 3,49,954/- which were purchased from M/s R.K. Steel Rolling Mills, Khanna vide bill dated 1.3.2007 for a sum of ₹ 3,46,758/-. The truck bearing registration No. PB-23E-7996 carrying the said goods was detained by the Excise and Taxation Officer, Alour Khanna while loading other goods from some other units from whom M/s Sahib Steel International purchased the goods. The detaining officer detained the goods on the ground that the driver of the truck had told that 10 MT of goods were loaded from M/s AB Steel Mill. The Excise and Taxation Officer instead of taking any action against M/s Satpal Mankoo Steel issued a show cause notice dated 1.3.2007 (Annexure P-2) to the appellant. The Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana vide order dated 14.3.2007 (Annexure P-3) imposed a penalty of ₹ 1,04,986/- under Section 51(7)(b) of the Act upon the appellant. Feeling aggrieved, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana who vide order dated 26.10.2012 (Annexure P-4), copy of which was sent to the appellant on 4.3.2013, dismissed the

appeal. Against the order, Annexure P-4, the appellant filed an appeal on 8.4.2013 (Annexure P-5) before the Tribunal. The Tribunal vide order dated 13.8.2015 (Annexure P-6) dismissed the appeal. Hence, the present appeal.

4. Learned counsel for the appellant submitted that all the authorities have not looked into the documents on record to return a finding that any attempt of evasion was made or the documents were not genuine. It was urged that the penalty has been levied by treating the transaction to be ingenuine solely on the basis of the statement of the driver of the vehicle which is legally unsustainable. In support of his contention, learned counsel for the appellant has relied upon the judgment of this Court in **Krish Pack Industries v. State of Punjab (2006) 28 PHT 27 (P&H)**.

5. We have heard learned counsel for the appellant.

6. The owner of the goods got the goods released on 5.3.2007 without producing any invoice or other account books before the detaining officer. No explanation was furnished before the Assistant Excise and Taxation Commissioner for not producing the account books or the so called invoice of R.K. Steel Rolling Mills and the other documents including the affidavit of the driver dated 9.3.2007. Accordingly, the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana vide order dated 14.3.2007 (Annexure P-3) imposed a penalty of ₹ 1,04,986/- under Section 51(7)(b) of the Act. Against the order, Annexure P-3, the appellant filed an appeal and the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana sustained the order of the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana and dismissed the appeal vide order dated 26.10.2012

(Annexure P-4). On further appeal, the Tribunal vide order dated 13.8.2015 (Annexure P-6) dismissed the appeal holding that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice to evade tax. A false invoice had been shown regarding the transaction by sister concern whereas the goods were purchased from M/s Satpal Manku Steel Industries without any payment of tax and without invoice. The conclusion recorded by the Tribunal reads thus:-

“In these circumstances, it appears that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice, obviously in order to evade the tax. When the truck was apprehended then the owner of the goods manipulated the document regarding the purchase of goods from M/s R.K. Steel Rolling Mills. It may further be observed that the premises of M/s Sahib Steel Industries, Motia Khan, Mandi Gobindgarh i.e. appellant and the consignee firm M/s Sahib Steel International, Motia Khan, Mandi Gobindgarh are at one and the same place. A false invoice has been shown regarding the transaction by sister concern when actually the goods were purchased from M/s Satpal Mankoo Steel Industries without payment of tax and without invoice. Thus, it is a clear cut case of attempt to evade the tax falling within the purview of Section 51(7)(b) of the Punjab Value Added Tax Act, 2005.”

7. The appellant had failed to produce any document before the Assistant Excise and Taxation Commissioner, Ludhiana in response

to the notice issued to it. All the authorities have concurrently recorded that there was an attempt to evade the tax.

8. The judgment in **Krish Pack Industries's case (supra)** does not come to the rescue of the appellant in light of the sufficient evidence to show that there was clear attempt on the part of the appellant to evade tax. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

9. There is a delay of 14 days in filing the appeal. CM No. 1696-CII of 2016 has been filed for condonation of 14 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

January 27, 2016
gbs

(RAJ RAHUL GARG)
JUDGE