IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.48 of 2015 (O&M)
Date of decision: 23.2.2016

M/s Kamal Trading Company

……Appellant

vs.

The State of Punjab and another

…..Respondents

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

1. Whether Reporters of 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?

Present: Mr. Surjit Singh Chauhan, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 30.3.2015, Annexure A.1 passed by the Punjab VAT Tribunal (in short, "the Tribunal") upholding penalty of ₹ 2,84,600/- under section 51(7)(c) of the Act, claiming following substantial questions of law:-

i) Whether production of documents relating to the goods produced after 20 hours of detention is not lawful when as per provisions of Section 51(7)(c) of the Act ibid, the detaining officer is under legal obligation to allow 72 hours to the owner of the goods to prove the genuineness of the transaction before him in his office?

ii) Whether the VAT Tribunal was justified in upholding the levy of penalty for non reporting at the ICC when in a number of cases it has been held that mere non reporting at ICC is not a good ground for levy of penalty under section 51(7)(c) of the Act ibid unless attempt to evade tax is proved beyond doubt?

iii) Whether respondent No.2 was justified to levy a penalty on the same day of receiving the report of the detaining officer overlooking the principle of natural justice and without giving an opportunity of being heard and production of account books to the appellant?

iv) Whether respondent No.2 was justified to levy a penalty only on the basis of statement of driver without conducting any enquiry as provided under section 51(7)(c) of the Act ibid to prove an attempt to evade tax by the appellant?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a firm. It is engaged in the business of resale of pulses and other karyana goods at Kharar, (Punjab). It is registered under the PVAT Act and the Central Sales Tax Act, 1956 (in short, "the CST Act"). It has been filing its returns regularly with the appropriate authority at Mohali and paying the tax in accordance with the relevant statutory provisions. The assessee imported 207 quintals of mixed dal (pulses) from M/s Atma Ram Om Parkash Grain Merchants and Commission Agents, 2746, Ist floor, Naya Bazaar, Delhi. The goods were covered by GR No.2338 dated 11.9.2008 of Dashmesh Carriers from Delhi to Kharar. The driver of the vehicle was not familiar with the route. Having paid toll tax at the toll plaza at Ghaggar on the border of Punjab and Haryana, the driver did not know about the ICC Banur

and failed to stop the vehicle there for generation of Form VAT XXXVI. The two police officials from the ICC, Banur overtook the vehicle about half a kilometer beyond the ICC and directed the driver to take the vehicle to ICC. The Excise and Taxation Inspector on duty asked the driver to produce bill and GR pertaining to the goods under transport. The driver produced bill No.3650 dated 11.9.2008 for ₹ 5,69,200/- issued by the Delhi dealer and GR No.2338 dated 11.9.2008 of Dashmesh Carriers from Delhi to Kharar. The Taxation Inspector refused to take the documents on record and made out a case that the goods were not covered by any bill of sale or GR as required under section 51(2) of the PVAT Act. The goods were detained by the Excise and Taxation Inspector on duty under section 51(6)(b) of the PVAT Act and notice was issued to the owner for 13.8.2014 to produce proper and genuine documents. Representative of the appellant-assessee alongwith the counsel appeared before the detaining officer on the said date and produced the bill and the GR in custody of the driver. Thereafter, the detaining officer forwarded the case to the ETO-cum-Designated officer for taking necessary action under section 51(7)(c) of the PVAT Act. Notice under section 51(7) of the PVAT Act was issued to the assessee for production of account books and to show cause as to why penalty under section 51(7)(c) of the PVAT Act be not imposed. According to the appellant-assessee, though notice was issued by respondent No.2 for 18.9.2008, the case was decided on 13.9.2008, thus denying the opportunity to the appellant to produce account books and other evidence to prove the genuineness of the documents submitted before the detaining officer. The detaining officer levied penalty of ₹ 2,84,600/- under section 51(7)(c) of the

PVAT Act being 50% of the value of goods. Aggrieved by the order, the appellant filed appeal before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Appeals). Vide order dated 6.11.2012, Annexure A.3, the appeal was dismissed. The appellant filed appeal before the Tribunal on the ground that no enquiry had been conducted by respondent No.2 before levying penalty under section 51(7)(c) of the PVAT Act. According to the assessee, the goods were detained on 12.9.2008 while the penalty was imposed on 13.9.2008 without affording any opportunity to it to produce account books and to prove the genuineness of the transaction. The Tribunal vide order dated 30.3.2015, Annexure A.1 dismissed the appeal on the ground that the documents were furnished 20 hours after detention and no account books were produced. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant.

4. The solitary issue that arises for consideration in this appeal is as to whether the assessee was liable for penalty under section 51(7)(c) of the PVAT Act for attempting to evade tax.

5. Concurrent findings have been recorded against the asssessee by the authorities below. After examining the evidence on record and hearing both the sides, it has been categorically recorded by the Tribunal in its order dated 30.3.2015, Annexure A.1 that the assessee had been transporting the goods without the genuine documents and the driver tried to escape from the ICC barrier, Banur but he was apprehended and the goods were detained. If the driver had lost the documents in transit, as alleged, he could have informed the assessee and stopped the vehicle which

he did not. Nothing could be shown by the learned counsel for the appellant-assessee except to urge that opportunity of hearing was not provided to it. The said contention was negated by the fact that in response to the notice issued to the assessee, two Advocates Mr. Varinder Gupta and Mr. Dharam Singh appeared on behalf of the assessee before the authorities and explained that the goods were purchased from Delhi but the documents of purchases and GR were lost in transit at Delhi. They also failed to produce the account books. Further, the documents were produced later on by the counsel for the assessee after 20 hours of detention. The relevant findings recorded by the Tribunal read thus:-

> "4. Allegedly the goods were purchased from Delhi. The documents of the purchase and GR were lost in transit at Delhi therefore not produced. The driver rather than making efforts to search the documents try to escape without stopping the truck at the ICC. The documents were produced later on by the counsel for the appellant after 20 hours of detention. Though the case of the appellant is that the original documents handed over to the driver were lost in transit but the record reveals that the appellant had produced the original documents before the Assistant Excise and Taxation Commissioner. Had the documents were lost then the appellant had not produced the original documents and only copies thereof would have been produced. Thus it is established that the appellant has been transporting the goods without the genuine documents and the driver of the appellant try to escape the eyes of ICC but he was apprehended and the goods were detained. If the driver had lost the said documents in transit then he would have immediately informed the appellant and stopped the vehicle but that was not so done. The story set up by the appellant appears to be an afterthought. Since the driver had not stopped the vehicle

voluntarily at the ICC despite the red signal therefore the inference would be drawn that he had no genuine documents with him and had intention to evade tax.

5. The pulses are a taxable commodity in the State of Punjab therefore the appellant was obliged to carry the goods with the genuine documents relating to the goods. The contention of the appellant that the transaction was shown in Form VAT 15 for the period from 1.7.2008 to 30.9.2008 and the fact about its purchase was reflected in the relevant statement in Form VAT 19, therefore, there could be no evasion of tax is without any merit. The return of the above period was furnished at the end of the month of October 2008. The bill in respect of consignment was produced after a gap of about 20 hours.

6. In such circumstances, it was possible to incorporate the entry regarding the transaction in their books of account."

6. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the concurrent concurrent findings recorded by the authorities below. The view taken by the Tribunal is a plausible view and we find no error therein. Thus, no substantial question of law arises. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 23, 2016
'gs'

(Raj Rahul Garg)
Judge