IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 28 of 2016
Date of Decision : 30th May, 2017

M/s Tayal Sons Limited **...Appellants**

versus

The State of Punjab and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL, JUDGE.

Present: Mr. Sudhir Mittal, Advocate for the appellants.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab for the respondents.

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S.J. VAZIFDAR, CHIEF JUSTICE

This is an appeal under Section 68(1) of the Punjab Value Added Tax Act, 2005 against the order of the Value Added Tax Tribunal, Punjab (hereinafter referred to as 'the Tribunal') dated 29.02.2016, dismissing the appellants' appeal against the order of the Deputy Excise and Taxation Commissioner (DETC) remanding the appeal against the order passed by the Assistant Excise and Taxation Commissioner, Mobile Wing (AETC) imposing a penalty of ₹4,94,800/- under Section 51(7)(b) of Punjab Value Added Tax Act, 2005.

2. According to the appellant, the following substantial questions of law arise in this appeal:-

(a) *Whether in the facts and circumstances of this case the sale was exempted under section 6(2) of the Central Sales Tax Act, 1956 being an inter state sales under Section 3(b) of the said act?*

(b) *Whether in the facts and circumstances of this case the Tribunal was justified in holding that there was an attempt to evade tax?*

(c) *Whether in the course of proceedings under Section 51(7) of the Punjab Value Added Tax Act, 2005 the nature of the transaction can be called into question?*

3. As a result of the Tribunal having dismissed the appellants' appeal against the order of the Deputy Excise and Taxation Commissioner, the order of remand directed by the Deputy Excise and Taxation Commissioner stands. As a result the question of law that arises is whether the Tribunal rightly upheld the order of the Deputy Excise and Taxation Commissioner remanding the matter to the Assistant Excise and Taxation Commissioner i.e. the Adjudicating Authority. The appeal is admitted on this question of law. The determination of this question will, however, require our having to consider the provisions of the Central Sales Tax Act.

4. The appellants' case is as follows:

M/s Nav Durga Industries sold 90 bales of cotton to the appellants on the terms and conditions contained in an invoice dated 05.12.2013. The invoice mentioned the particulars of the consignment including the price and the appellants' TIN number. A goods receipt (GR) was issued by the Punjab Goods Transport Company also dated 05.12.2013 in which M/s Nav Durga Industries and the appellants were described as the consignor and consignee, respectively. The GR notes and the consignment were to be transported from Sangaria in Rajasthan to Machhiwara in Punjab. The appellants are located in Ahmedabad, Gujarat. The appellants, in turn, sold the consignment to M/s S.T. Cottex Exports Pvt. Ltd. on the terms and conditions contained in an invoice also dated 05.12.2013. The invoice states that the sale was an "E-1 sale against 'C' Form".

5. The consignment left Sangaria in Rajasthan for Machhiwara in Punjab. On 06.12.2013, the vehicle loaded with the consignment was checked by the Excise and Taxation Officer, Mobile Wing, Fazilka (Punjab). The driver presented the said invoices, the GR and a weight note issued by

M/s Nav Durga Industries. The detaining officer was of the view that this was not a genuine E-1 sale and forwarded the case to the AETC, who issued a notice to the appellants, who according to him are the owners of the goods. The AETC noticed that the appellants had affixed the mark 'ST' on the consignment. The Department contends that this was a reference to M/s S.T. Cottex Exports Pvt. Ltd. It was also noticed that the goods were not accompanied by the Vat 49 Form as required by the Government of Rajasthan. The AETC observed that the order was predetermined and, therefore, the transaction could not be considered to be as an E-1 sale. He held that the transaction was deliberately shown to be an E-1 sale. According to him, the same was by the appellants to M/s S.T. Cottex Exports Pvt. Ltd.

6. The first appellate authority remanded the matter. The appellants challenged that order before the Tribunal contending that the first appellate authority ought to have decided the matter himself. Mr. Sudhir Mittal contended on behalf of the appellants that M/s Nav Durga Industries, first sold the goods to the appellants and the appellants thereafter sold then to M/s S.T. Cottex Exports Pvt. Ltd. It was contended before the Tribunal as well as before us that the transaction between the appellants and M/s S.T. Cottex Exports Pvt. Ltd. was a second sale, which fell within the ambit of Section 6(2) of the Central Sales Tax Act and is, therefore, exempted from tax under the CST Act. We, however, cannot accept his submission that the case is clearly established on undisputed facts and that, therefore, the first Appellate Authority and the Tribunal ought to have decided the matter themselves without remanding the matter to the Assistant Excise and Taxation Commissioner.

7. Sections 3 and 6(2) of the Central Sales Tax Act, 1956 read as under:-

> ***3. When is a sale or purchase of goods said to take place in the course of inter- State trade or commerce***
> *A Sale or purchase of goods shall be deemed to take place in the course of inter-state trade of commerce if the sale or purchase-*
> *(a) occasions the movement of goods from one State to another or*
> *(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.*
> ***Explanation 1 :*** *Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.*
> ***Explanation 2:*** *Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.*
>
> ***"6. Liability to tax on inter-State sales.***
>
> ***(1) xxxx xxxx xxxx xxxx xxxx***
>
> *(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act: Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—*
> *(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and*
>
> *(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8:*

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent. or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section."

8. The question is whether in the present case, there are no disputed facts and that the facts clearly establish that the sales fall within the ambit of Section 6(2) of the Act. In our view, the order of remand was not only justified but infact protects the appellants' rights. The appellants' rights are protected, for on remand it would be entitled to establish its case including, if necessary by leading further evidence.

9. We will presume in favour of the appellants that there were two sales, one between M/s Nav Durga Industries and the appellants and the other between the appellants and M/s S.T. Cottex Exports Pvt. Ltd. Mr. Mittal contended that the sale by the appellant to M/s S.T. Cottex Exports Pvt. Ltd. falls within the ambit of Section 6(2) of the Act.

Section 6(2) contemplates two sales. The first is referred to in the words "*where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another"*. The second sale contemplated in Section 6(2) is referred to in the words "*any subsequent* *sale during such movement effected by a transfer of documents of title to such goods to a registered dealer".*

Section 6(2) would operate only where the first and the second sales conform to the requirements stipulated therein.

10. The first sale must be a sale in the course of inter-state trade or commerce which has occasioned the movement of such goods or has been effected by a transfer of documents of title to such goods during their movement from one State to another. The sale may fall in either of these categories. Mr. Mittal contends that the first sale is the one between M/s Nav Durga Industries and the appellant. This sale was not effected by a transfer of documents of title to the goods. As noted earlier an invoice was issued by M/s Nav Durga Industries to the appellant which by itself does not indicate an inter-state sale. The mere mention of the appellant i.e. the purchaser in that sale as belonging to Ahmedabad does not establish an inter-state sale. However, the invoice must be read with the lorry receipt (for short 'LR'). The LR refers to the lorry/truck number, the date of the transaction and indicates that the goods were to be transported from Rajasthan to Punjab. The sale, therefore, was in the course of inter-state trade or commerce.

It is important to note that M/s Nav Durga Industries, Rajasthan is named as the consigner and the appellant is named as a consignee. Thus the sale between M/s Nav Durga Industries and the appellant occasioned the movement of goods from one State to another. That the sale occasioned the movement of such goods from one State to another i.e. from Rajasthan to Punjab is evidenced by the invoice read with the LR. Without the sale of the goods by M/s Nav Durga Industries to the appellant, there would have been no question of transporting, moving the goods from one State to another, namely, from Rajasthan to Punjab. Thus the sale between M/s Nav Durga Industries and the appellant is a sale of goods in the course of inter-state trade or commerce which occasioned the movement of goods from one State to another, namely, Rajasthan to Punjab.

11. The next question is whether the subsequent sale, namely, the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. conforms to the type of second sale referred to in Section 6(2). The sale is evidenced by the invoice also dated 05.12.2013 issued by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. and the endorsement on the reverse of the LR by the appellant "Please Delivery To This Goods M/s S.T.Cottex Exports Pvt. Ltd. r11c-IRAQ-Machhiwara (LDH) TIN No.03921002721". The subsequent sale referred to in section 6(2) must be a sale during the movement of the goods effected by the transfer of documents of title to such goods to a registered dealer. In other words the subsequent sale must be during such movement i.e. movement caused by the first sale and must be effected by the transfer of documents of title to such goods to a registered dealer. It is not sufficient if the subsequent sale is effected by transfer of documents of title to such goods. It is also necessary that this second sale must be subsequent to the first sale and the subsequent sale must be during the movement of the goods under the first sale.

12. Two questions of fact arise in respect of the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. Firstly was it a subsequent sale, to wit, was it a sale entered into after the first sale referred to in section 6(2). There is nothing on record that expressly indicates whether or not it was. Both the invoices are of the same date i.e. 05.12.2013. Absent any evidence to the contrary, it would be reasonable to presume that the second

sale i.e. the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. was subsequent to the sale between the appellant and M/s Nav Durga Industries for in the normal course, the appellant could not have sold the goods to M/s S.T.Cottex Exports Pvt. Ltd. if it did not have or was not entitled to the same itself unless of course it was a forward certificate. The respondents, however, have contended that this was really a direct sale by M/s Nav Durga Industries to M/s S.T.Cottex Exports Pvt. Ltd. or by the appellant arranging both the sales simultaneously. That, however, would be a disputed question of fact in respect whereof the evidence is insufficient. The order of remand would enable both the parties to adduce evidence in support of their rival contentions.

13. The matter, however, does not end here. In addition to the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. being subsequent to the sale between the appellant and M/s Nav Durga Industries, the sale by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. must have been during such movement i.e. movement of the goods from one State to another i.e. from Rajasthan to Punjab. Even assuming that this was a sale by transfer of documents of title to the goods by virtue of the endorsement on the reverse of the LR, it would be a disputed question of fact as to whether the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. was during the movement of the goods. Explanation (i) to Section 3 provides that where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery. The bales were marked with the letters 'ST' which indicates the possibility of the goods having been sold by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. before their movement i.e.

before they were delivered to the carrier i.e. the lorry. If the transaction was prior to the movement of the goods, the subsequent sale would not fall within the ambit of Section 6(2) of the Act.

14. There is nothing to indicate that the subsequent sale i.e. the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd. was during such movement i.e. the movement on account of the first side. The record does not indicate that the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd. was during such movement of the goods. Both the invoices are dated 05.12.2013. The onus was on the appellants to establish that the second transaction i.e. transaction between itself and M/s S.T. Cottex Exports Pvt. Ltd. was entered into during the movement of the goods from Rajasthan to Punjab.

The evidence, in fact, indicates that the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd., even assuming it to be the second sale, was prior to the movement of the goods effected by the first side. As mentioned earlier, the cotton bales had on them the mark 'ST'. The name of the purchaser of the goods from the appellants is M/s S.T. Cottex Exports Pvt. Ltd. On the record as it stands, there is no other explanation for the letters 'ST' used on the bales. The presumption, therefore, that the word's indication of M/s S.T. Cottex Exports Pvt. Ltd. was reasonable and justified. Upon remand, the appellants would have the opportunity of explaining the use of the letters 'ST' as well.

15. Mr. Mittal next submitted that, in any event, the State of Punjab would not be entitled to collect the Central Sales Tax. In this regard, he relied upon Section 9(1) of the Act. The respondents, however, have not sought to collect the Central Sales Tax. They have imposed a penalty under

Section 51(7)(b) of the Punjab Vat Act. Section 51 insofar as it is relevant, reads as under :-

> **"SECTION 51. ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POSTS AND INSPECTION OF GOODS IN TRANSIT:**
>
> *(7) xxxx xxxx xxxx xxxx xxxx xxxx xxxx*
>
> *(b) The designated officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty percent of the value of the goods. In case he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings."*

16. It is true that no tax is payable in respect of these transactions under the Punjab Vat Act. However, the mis-declaration in respect of the consignment would invite the penalty under Section 51(7)(b) nevertheless. Section 51(7)(b) would come into operation, if it is found that there has been an attempt to avoid or evade the tax due "or likely to be due under this Act". It is not necessary, therefore, that the tax must be due under the PVAT Act for the purpose of Section 51(7)(b). It is sufficient, if there is an attempt to avoid or evade the tax likely to be due under this Act. It is reasonable to presume that M/s S.T. Cottex Exports Pvt. Ltd. on a further sale would collect the tax payable under the Central Sales Tax while further selling the goods or factor the same into its sale price. If tax under the CST Act is not paid, the value of the goods would be less. If tax under the CST Act is paid, the value would be higher resulting in enhancement of liability to pay the tax under the Punjab VAT Act in respect of the sales by the purchaser in Punjab.

The section is preventive.

17. It was also necessary to remand the matter even to avoid the liability under section 51(7)(b) of the Punjab Value Added Tax Act, 2005 on the ground that in any event there was no intention to avoid or evade the tax.

Upon remand the appellant would also be entitled to contend in the alternative that even assuming that the sale does not fall within the ambit of Section 6(2), it is not liable to penalty under section 51(7)(b) of the Punjab VAT Act as it did not attempt to avoid or evade the tax due or likely to be due under the Act. We refrain from expressing any opinion as to whether the *mens rea* is required for the purpose of section 57(1)(b) of the Act. That issue would be decided upon remand and any challenge to the order passed upon remand.

18. The Tribunal dismissed the appeal. As a result thereof the order of remand passed by the First Appellate Authority stands. In these circumstances, the Assessing Authority shall pass the order on remand without being influenced by the observations of the Tribunal.

19. The question of law is answered in favour of the respondent. The appeal is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

30th May, 2017
Kanchan/ravinder

Whether speaking/reasoned? √Yes/No
Whether reportable? √Yes/No