
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

VAT Appeal No.5 of 2016

Date of decision: July 11, 2017

M/s Jainsons Appliances, Baddi, District Solan (HP)

....Appellant

versus

The State of Punjab and another

....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Navdeep Monga, Advocate for the appellant.

Mr. Jaswinder Singh, Sr. DAG, Punjab.

AJAY KUMAR MITTAL, J.

1. The appellant-assessee has filed the instant appeal under Section 68(2) of the Punjab Value Added Tax Act, 2005 (in short, 'the PVAT Act') against the order dated 08.10.2015 (**Annexure A-10**) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (in short, 'the Tribunal') in Appeal No.86 of 2015, claiming the following substantial questions of law:-

“(i) Whether on the facts and circumstances of the case, any attempt to evade the tax of State of Punjab is possible when the goods have been declared at the Himachal Pradesh Sales Tax Barrier before entering the State of Punjab and production of C Form obtained from Punjab Dealer would be mandatory for levy of concessional rate of tax in Himachal Pradesh?

(ii) Whether on the facts and in the circumstances of the case, the penalty u/s 51(7) of the PVAT Act can be imposed

merely for non-declaration of goods at ICC when no deficiency has been pointed out in the documents accompanying the goods?

(iii) Whether the provisions of Rule 64C PVAT Rules, 2005 can be applied and penalty imposed, in a case where the goods were coming by road and not by railway or by air or by dry port?

(iv) Whether the provisions of Section 51(7) can be applied and penalty imposed, in a case where the transaction is of interstate sale and not taxable under the Punjab VAT Act, 2005?

(v) Whether there is any mens rea on the part of the appellant to evade the payment of tax due to the state of Punjab for which the penalty can be imposed under Section 51(7) of the Act?”

2. A few facts necessary for adjudication of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a dealer duly registered under the provisions of the Himachal Pradesh Value Added Tax Act, 2005 and under the Central Sales Tax Act, 1956 (in short, 'the CST Act'). It is engaged in the business of manufacturing and trading of electric home appliances. In the normal course of business, the assessee made an interstate sale of goods i.e. 1410 pieces of electric room heaters to M/s Bajaj Electrical Ltd., Banur vide invoice dated 29.10.2013 for ₹ 16,95,912/-, booked with the Nalagarh Truck Union, Nalagarh for its transport from Baddi (Himachal Pradesh) to Banur (Punjab). The tax as per the CST Act had also been charged @ 1.5%. On 29.10.2013, upto furnishing the information at Baddi in requisite form, the vehicle moved towards its destination i.e. Banur. When the vehicle entered into the limits of Punjab and headed towards the nearest check

post for reporting the goods, it was checked at the link road connecting Chhatbir with Banur-Landran Road. On asking, the driver produced the relevant documents. The checking officer detained the goods under Section 51(6)(b) of the PVAT Act on the ground that the documents accompanied, the goods were not proper according to law and the assessee was making an attempt to evade the tax by not reporting at the nearest Information Collection Centre (in short, 'ICC') while entering into the State of Punjab. A show cause notice dated 30.10.2013 (Annexure A-4) was issued to the assessee to appear before the detaining/designating officer. The assessee appeared before the checking officer along with the books of account and other relevant documents pertaining to the sale of goods. The officer forwarded the case to the higher authority for taking necessary action under Section 51(7)(c) of the Act. The case was sent to the Assistant Excise and Taxation Commissioner-cum-Director Enforcement(Investigation), Mobile Wing (Punjab), Chandigarh (in short, the AETC') to decide whether the assessee had made an attempt to evade the tax due to the State of Punjab. Notice was issued and the assessee appeared with all the relevant documents. Since, the goods were coming into the State of Punjab after paying the tax under the CST Act, no attempt to evade the tax due to the State of Punjab could be possible. Therefore, the goods were got released after furnishing of bank guarantees. The Designated authority passed the order dated 12.11.2013 (Annexure A-5), imposing penalty of ₹ 8,47,957/- and ₹2,42,593/- under Sections 51(7)(c) and 51(12) of the PVAT Act respectively and held that the goods were not accompanied by proper

documents and the driver did not report at the nearest ICC while entering into the State of Punjab. Aggrieved by the order, the assessee filed an appeal before the First Appellate Authority i.e. the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala [in short, 'the DETC(A)]. After examining the matter, the DETC(A) upheld the order passed by the AETC on the ground that no information was generated at the nearest ICC while entering into the State of Punjab and the assessee had failed to produce the relevant documents. Still not satisfied, the assessee filed second appeal before the Tribunal. It was pleaded before the Tribunal that the provisions of Rule 64C of the Punjab Value Added Tax Rules, 2005 were not applicable as the goods were coming by road. Further, the penalty under Section 51(12) of the PVAT Act was illegally imposed by the designated officer as the name of the consignor and the consignee was written on the invoice. Vide order dated 08.10.2015 (Annexure A-10), the Tribunal partly allowed the appeal. The penalty under Section 51(7)(c) of the PVAT Act was maintained whereas the one under Section 51(12) of the PVAT Act was deleted. Hence, the instant appeal by the appellant-dealer.

3. We have heard learned counsel for the parties.

4. According to the appellant-assessee the goods were dispatched from Baddi to Banur. It was obligatory on the part of the driver and the assessee to generate E-ICC at the nearest ICC while entering into the State of Punjab. Though, the driver of the vehicle crossed two ICCs i.e. Mullanpur and Balongi yet he did not report about the goods at any of them. It has been categorically recorded by the

Tribunal that there were two ways from Baddi to reach Banur, one via Pinjore and Zirakpur and the other via Balongi, Mullanpur and Mohali. The driver appeared to have not reported either at Zirakpur or any other ICC falling on the way but he adopted the escape route as he was intercepted on the link road connecting Chhatbir i.e. Banur-Landran Road. Further, it was recorded by the Tribunal that the adoption of escape route by the driver was sufficient to draw the inference that the assessee attempted to evade the tax. The Tribunal further noticed that it was a transaction of sale and the Punjab Tax had not been paid. The appellant wanted to reach the premises of the consignee while avoiding all the ICCs and merely payment of 1.5 per cent CST was not sufficient and was an excuse to evade payment of Punjab Tax and also to keep the transaction out of books of account. So far as the imposition of penalty was concerned, the assessee being a consignor was not held for imposition of penalty under Section 51(12) of the PVAT Act. Thus, the Tribunal while partly accepting the appeal correctly maintained the penalty under Section 51(7)(c) of the PVAT Act and deleted the one under Section 51(12) of the PVAT Act. The relevant findings recorded by the Tribunal in this regard read thus:-

“Admittedly, the appellant M/s Jainsons Appliances had dispatched the goods worth Rs.16,95,912.75/- from Baddi (HP) to Banur situated in the State of Punjab. It was a transaction of sale. The Punjab tax has not been paid. The copy of the VAT XXXVI appended with the documents reveals that the goods were reported on 29.10.2013 at 9.45 PM at the check post Baddi. It is further evident that the driver was apprehended on the link road after more than 12

hours. The distance from Baddi to place of apprehension is not more than 40 Kms. At any cost, this much distance could be covered within an hour or so. There are two ways from Baddi to reach Banur, one via Pinjore and Zirakpur and the other via Balongi, Mullanpur, Mohali and then to Banur. If one travels from Baddi via Mohali then two ICCs i.e. Balongi and Mullanpur fall on the way and if one travels through Zirakpur then before reaching Banur ICC Zirakpur falls on the way. The appellant appears to have not reported either at Zirakpur or any other ICC falling on the way but he adopted the escape route as he was intercepted on the link road connecting Chhatbir i.e. Banur Landran Road. Thus apparently, the appellant wanted to reach the premises of the consignee while avoiding all the ICCs. Mere payment of 1.5% CST is not sufficient and may be a good excuse for him to evade the Punjab Tax and to keep the goods out of books of account. In such situation, the non-generation at ICC in violation of Rule 64(c) assumes importance.

While exporting or importing the goods in case of sale transaction, the information has to be given in the following manner:-

(a) E-ICC is required to be done in both the cases i.e. in case of export of goods outside the State of Punjab (Under Rule 64-B).

(b) In case of import of goods into the State of Punjab from outside **by air, railway or dry port (Under Rule 64-C).**

Rule 64-B read with rule 2 (hh) of PVAT Rules, 2005 deals with the procedure for furnishing information under E-ICC system relating to export of goods outside the State of Punjab by any mode of transition. An owner and person incharge of the specified goods, before putting the same into transit for export out of the state, for trade or commerce by

any mode of transition, has to report the information relating to such export on the virtual ICC in form VAT-12.

Rule 64-C: *if a person imports any goods into the State of Punjab either by air or railways or by dry ports then as per Rule 64-C he needs mandatorily to report the said transaction on the virtual ICC in form VAT-12, before taking the delivery of such goods or before transition of such goods by road, whichever is earlier. That means import of all goods by railway or air or by dry port will have to be reported on E-ICC and such reporting will have to be done before taking the delivery of such goods or before transition of such goods by road, whichever is earlier.*

*It should be noted that **E-ICC system is applicable to the specified goods and monetary limit** in case of Rule 64-B, but in case of Rule 64-C system of E-ICC is applicable on all the goods irrespective of nature of goods or the monetary limit.*

Thus, on bare reading of Rule 64-C, the E-ICC was to be generated before taking the delivery of such goods or before transition of such goods by road, whichever is earlier. In the present case, the goods were coming by road and it was an interstate transaction as such Rule 64-C is applicable in the present case. As regards, the argument that the goods had entered into State of Punjab after paying the CST therefore rule 64(c) is not applicable, I do not agree to the said contention. Mere payment of 1.5% of tax on account of CST would not be suffice as against the damage which may result on account of bringing the goods into the State of Punjab by way of keeping the same out of the books of account, particularly, when there was an attempt to evade tax, the adoption of the escape route by itself is sufficient to draw the

inference that appellant attempted to evade the tax.”

5. Learned counsel for the appellant-assessee has not been able to show that the findings recorded by the Tribunal are illegal or perverse or are based on misreading of evidence on record warranting interference by this Court. He has also not been able to produce any material to substantiate its claim made in the appeal. Thus, no substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 11, 2017
'gs'

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes