IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 84 of 2016 (O&M)
Date of decision: 19.07.2017

M/s K.C. Dhiman and Sons, Street No.4, Preet Nagar, Mandi Gobindgarh through its Proprietor Karam Chand.

……Appellant

Vs.

The State of Punjab and others

…..Respondents

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

Present: Mr. S.S. Brar, Advocate or the appellant-assessee.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 68(1) of the Punjab Value Added Tax Act, 2005 (in short, " the Punjab VAT Act) against the order dated 10.3.2016, Annexure A.3, passed by the Value Added Tax Tribunal (in short, "the Tribunal") in Appeal No. 20 of 2014, claiming following substantial questions of law:-

> (a) "Whether in the facts and circumstances there is any legal evidence available on record to sustain the findings of the Authorities Below that the appellant had brought the goods from Delhi through escape route in a situation when the goods were admittedly taken possession from within the Town?
>
> (b) Whether in the facts and circumstances there is any legal evidence to sustain the findings that the appellant attempted to evade the payment of Tax by willfully failing to file any declaration at the Entry Barrier can be sustained simply on

some documents of weighment slips allegedly given by some one to ETO without there been any independent evidence?

(c) Whether in the facts and circumstances the respondents have failed to assign any ground to reject the stand of the appellant right from day one that the goods with vehicles were taken possession forcibly from the business premises of the dealer?

(d) Whether in the facts and circumstances the Authorities Below are justified in ignoring the written orders placed by the local dealer duly supported for the supply of the goods as also the account books of the dealer without property scrutiny and hold him guilty of evasion of Tax and the action is illegal and arbitrary?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. On 13.04.2010, the appellant-assessee dealer had imported rolling material through valid documents in Four Trucks along with Bills, GRs and other related documents. When the Truck with goods reached Shambu ICC Import, the driver of the vehicle deposited Entry Tax. At the exit point, the Detaining Officer detained the goods with vehicles on 13.04.2010 on the ground that there was mis-description and forwarded the case to Assistant Excise and Taxation Commissioner (AETC) Shambu who vide order dated 17.05.2010, Annexure A.1, imposed penalty. The assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) (DETC). Vide order dated 11.2.2013, Annexure A.2, the DETC (A) dismissed the appeal. The assessee filed further appeal before the Tribunal which was also dismissed on 10.03.2016, Annexure A.3. According to the appellant-assessee, the orders of penalty are against the law and facts. There was no mis-description of goods which were though rolling material but were in the

shape of scrap. There was no difference of tax on each of the two items. The rates were same. The goods were shown at the entry point and entry tax was paid. When the proper information was given at ICC Shambu Import, there was no reason to believe that there was an attempt to evade tax. Hence, the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant-assessee.

4. Concurrent findings have been recorded by the authorities below. It has been categorically recorded by the Tribunal after examining the entire evidence on record that the goods carried in the four Trucks did not tally with the invoice. On scrutiny of the documents, the invoice as well as GRs were found to contain mis-description of goods as the documents were related to rolling material whereas the goods were actually found to be melting iron scrap. It was observed by the Designated Officer that the goods were not covered by proper and genuine documents and there was attempt to evade the tax. If the dealer had sold the scrap then he was required to mention the same in the invoices. The scrap so loaded in the vehicles was not covered by the genuine documents and the bills regarding the rolling material were procured with an intention to keep the goods out of the account books. It was further recorded that the appellant knowing that the bills were regarding the rolling material, mis-represented to the Authorities that the bills related to scrap which was done with intention to conceal true facts and the goods inviting higher tax were being taken away on payment of lower tax. Thus, it was concluded by the Tribunal that there was intention to evade the tax. The relevant findings recorded by the Tribunal in this regard read thus:-

> "Having heard the rival contentions, I do not find myself persuaded by the contentions raised by the counsel for the

appellant. The appellant fully knew that the goods carried in the four trucks did not tally with invoice, if the dealer had sold the scrap then he must have mentioned the same in the invoices, but that did not happen. It appears that the scrap so loaded in the vehicles was not covered by the genuine documents and the bills regarding the rolling material were procured with an intention to keep the goods out the account books. If further transpires that the appellant knowing fully well that the bills were regarding the rolling material mis-represented to the authorities that the bills related to scrap. Actually, this was also done with intention to conceal the true facts and throw dust in eyes of the check post authorities that the goods attracting lesser tax were being taken away on payment of higher tax. Thus, intention to evade the tax is clearly made out in the case."

5. Learned counsel for the appellant-assessee has not been able to point out any illegality or perversity in the concurrent findings recorded by the authorities below. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 19, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**