

Gurbax Singh
2017.08.29 14:38

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

VATAP No.35 of 2017(O&M)

Date of decision: 08-08-2017

The Bhogpur Cooperative Sugar Mill Limited

.....Appellant

Vs.

State of Punjab and others

.....Respondents

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

Present: Mr. M.R.Sharma, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This order shall dispose of VAT Appeal Nos. 33 to 35 of 2017, as according to the learned counsel for the appellant, the questions of law involved in all the three appeals are common. However, one additional question has been added in VATAP No.35 of 2017. Consequently, the facts are being extracted from VATAP No.35 of 2017.

2. VATAP No.35 of 2017 has been preferred by the appellant-assessee under Section 68 of the Punjab VAT Act, 2005 (in short, "the PVAT Act") against the order dated 23.12.2016, Annexure A.3, passed by the Chairman VAT Tribunal, Punjab Chandigarh (in short, "the Tribunal") in Appeal No.164 of 2016, for the assessment year 2009-10, claiming following substantial questions of law:-

“(i) Whether in the facts and in the circumstances of the case, the orders (Annexure A.1), (Annexure A.2) and (Annexure A.3) are legally sustainable in law?

(ii) Whether in the facts and in the circumstances of the case, the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Excise and Taxation cum-Designated Officer, Jalandhar-2 as upheld by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar more so by following the judgment of this Hon'ble Court in the case of *A.B.Sugars Limited* which is still a matter under challenge before the Hon'ble Supreme Court of India and wherein leave has been granted?

(iii) Whether in the facts and in the circumstances, the order levying purchase tax under section 19 of the Punjab VAT Act, 2005 and not allowing correctly ITC on the said purchase tax without assigning any reason is correct in law in view of the provision of the Act and various pronouncements in this behalf?

(iv) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Excise and Taxation cum Designated Officer, Jalandhar-2 as upheld by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar in levying purchase tax under Section 19 of the Punjab VAT Act on the State Advised Price instead of SMP paid by the appellant as per order of assessment (Annexure A.1)?

(v) Whether in the facts and in the circumstances of the case, the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Excise and Taxation cum Designated Officer, Jalandhar-2 as upheld by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar imposing penalty under Section 53 of the Punjab VAT Act 2005 inspite of order dated 31.1.2006 of the Division Bench of this Hon'ble Court?

(vi) Whether on the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Excise and Taxation cum Designated Officer, Jalandhar-2 as upheld by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar imposing interest under Section 32 of the Punjab VAT Act 2005 in spite of order dated 31.1.2006 of the Division Bench of this Hon'ble Court?"

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.35 of 2017 may be noticed. The appellant is a cooperative society duly registered under the Punjab Cooperative Societies Act, 1961. Its office is situated at Bhogpur, District Jalandhar. It is engaged in the purchase of sugarcane of its members and process the same to extract sugar and other allied products like molasses, baggasse, press mud etc. Some items are partly taxable and partly tax free. These items are sold within the State of Punjab and more particularly sugar and molasses are sold by way of allotment by the government and the appellant sugar mill does not have liberty to sell these goods of its own. Similarly, there is allocation of area made by the Government of Punjab from where the sugarcane can be purchased by the appellant mill. The appellant filed its quarterly returns as per provisions of Section 26 of the PVAT Act and also the annual return in VAT-20 for the year under consideration. The case of the appellant was taken up for scrutiny. The Excise and Taxation cum Designated officer, Jalandhar while completing the assessment determined the purchase price of sugarcane for the purpose of levy of purchase tax at ₹ 4,75,60,337/-. The appellant had declared the purchase price at ₹ 4,66,76,828/- being the statutory

minimum price fixed by the Government of India for the year under consideration. The Assessing officer added an amount of ₹ 8,83,509/- paid by the appellant on the direction of the State of Punjab and levied purchase tax at the rate of 4% of the value of purchase price. The gross purchases as declared by the appellant amounted to ₹ 5,62,95,589/- out of which ₹ 24,25,575/- were inter state purchases and ₹ 9,95,996/- were purchases of tax free goods. In addition, purchases of ₹ 7,22,953/- were made from other than taxable person. The appellant had declared purchases amounting to ₹ 45,90,728/- on which it had claimed Input tax credit. According to the appellant, although the Assessing officer admitted availability of ITC at ₹ 20,95,351/- yet allowed ITC at ₹ 29,964/-. The Assessing officer allowed net ITC at ₹ 1,85,875/- and created additional demand of ₹ 38,85,333/- inclusive of penalty under Section 53 of the PVAT Act at ₹ 16,10,307/- and interest under Section 32 of the PVAT Act at ₹ 4,02,576/-. The appeals filed by the appellant before the Deputy Excise and Taxation Commissioner (Appeals) and the VAT Tribunal having failed, the appellant is before this court through the instant appeals.

4. We have heard learned counsel for the appellant.

5. Question (i) is legal and formal. Question Nos. (ii) and (iv) do not arise in the present appeals as the issue has already been settled by this Court vide judgment dated 15.7.2015 in VATAP No.176 of 2013 (*M/s AB Sugar Limited vs. State of Punjab and another*).

6. Question No. (iii) is covered against the assessee by order dated 21.09.2016 of this Court in VATAP No.43 of 2016 (*The*

Morinda Cooperative Sugar Mill Limited Morinda vs. State of Punjab and others), wherein it was held thus:-

“As far as question No.(iii) is concerned, we do not find any merit in the contention raised by learned counsel for the appellant that input tax credit on the purchase tax, though payable but not paid by the appellant actually, could have been granted. The claim made by the appellant is that though the purchase tax was payable in terms of Section 19 of the Punjab Value Added Tax Act, 2005 (for short, “the Act”), however, admittedly that was not paid. Once that was not paid, there is no question of granting the benefit thereof for the purpose of calculation of input tax credit. Hence the question No.(iii) is declined.”

7. With regard to question Nos. (v) and (vi), the same stand concluded against the assessee by judgment of this Court dated 15.5.2017 in VATAP Nos. 41, 43, 64 and 65 of 2016 (***The Morinda Cooperative Sugar Mill Limited vs. state of Punjab and others***) and therefore, they do not arise for consideration in the appeals

8. In view of the above, there is no merit in the appeals and the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 08, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes/No
Yes/No