IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-31-2019 (O&M)

Date of Decision: 7.2.2019

M/s Gupta Medical Hall, Panipat

....Appellant.

Versus

Haryana VAT Tribunal, Chandigarh and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Sandeep Vermani, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 30.5.2016 (Annexure A-1) passed by respondent No.3, dated 15.9.2017 (Annexure A-2) passed by respondent No.2 and dated 20.11.2018 (Annexure A-3) passed by the Haryana Value Added Tax Tribunal (hereinafter referred to as "the Tribunal")-respondent No.1 in STA-186/2017-18, claiming the following substantial questions of law:-

i) Whether VAT N-2 notice which is mandatory is required to be served on the assessee for assessment under Section 16 of the HVAT Act?

ii) Whether the proceedings against the assessee would be rendered illegal in the absence of serving

VAT N-2 notice on the assessee for the assessment under Section 16 of the HVAT Act?

2. Put shortly, the facts necessary for the disposal of the present appeal as narrated therein may be noticed. The appellant is engaged in the business of purchasing and selling of medicines within the State of Haryana since 2012-13. The premises of the appellant were inspected by the Department on 2.6.2015 under Section 29 of the Act. The Assessing Authority vide order dated 30.5.2016 (Annexure A-1) levied tax and penalty under Section 16 of the Act holding that the assessee did not get itself registered although it had become liable to get itself registered due to exceeding the taxable turnover limit of ₹ 5,00,000/- within two months of starting of the business. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before respondent No.2 who vide order dated 15.9.2017 (Annexure A-2) dismissed the said appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 20.11.2018 (Annexure A-3) partly allowed the appeal and remanded the matter back to the Assessing Authority for recalculation of the tax and penalty amount after affording reasonable opportunity to the assessee for hearing and producing documents, if any. Hence, the present appeal by the assessee.

3. Learned counsel for the appellant submitted that the statutory VAT N-2 notice was not served upon the assessee and, therefore, the proceedings were rendered illegal. It was further submitted that the penalty should not have been levied on the assessee as it did not get itself registered under bonafide belief. According to the assessee, if there had been malafide intention, it would not have retained the bill book and purchase invoices.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. The case had been decided as inspection case under Section 29 of the Act after giving proper opportunity of hearing to the assessee and by issuing notice. Moreover, the limitation period for serving VAT N-2 notice under Section 16 of the Act had not yet expired and, therefore, even if the matter was remanded to the Assessing Authority for serving VAT N-2 notice on the assessee and then to pass fresh order, it would be a formality and futile exercise. The plea of the assessee that it did not get itself registered under bonafide belief was rejected by the Tribunal by noticing that the assessee had maintained the purchase invoices and bill books for its own record. The assessee cannot be absolved of its liability to pay penalty merely because it had retained the purchase invoices and bill books. The Tribunal while remanding the matter to the Assessing Authority for limited purpose of recalculation of the penalty amount had observed that the Assessing Authority had determined the amount of deemed sales or GTO on the basis of purchase invoices by adding 10% profit element to the total amount of purchases made by the assessee, thus, the balance stock found at the time of inspection automatically stood included in the Gross Turnover (GTO) and the tax was to be levied thereon.

6. It was not disputed by the learned counsel for the appellant that the limitation still exist during which VAT N-2 notice could be issued and served upon the assessee, thus, no benefit could be derived by the assessee from such a plea.

7. Learned counsel for the appellant has failed to pin point any illegality or perversity in the findings recorded by the Tribunal which may

warrant interference by this Court. No substantial question of law as claimed by the appellant arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 7, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	**Yes/No**
Whether Reportable	**Yes/No**