IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 59 of 2018 (O&M)
Date of decision: 29.01.2019

M/s Allengers Global Healthcare Private Limited

……Appellant

Vs.

The State of Punjab and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rishab Singh, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.

2. The appellant-assessee has filed the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, " the PVAT Act") against the order dated 02.05.2017, Annexure A.9, passed by the Punjab Value Added Tax Tribunal, (in short, "the Tribunal") in Appeal No. 34 of 2016, claiming following substantial questions of law:-

"(i) Whether on the facts and circumstances of the case, Ld. Tribunal was justified in upholding the penalty for non-production of one Invoice for 25 health monitors whereas GR produced contained the full quantity of goods during voluntary reporting of goods at the time of entry into State at the ICC?

ii) Alternatively, whether the Tribunal could have upheld the imposition of penalty under Section 51(7)(c) and not

> under Section 51(7)(b) read with Section 51(6)(b) and 51(4), where the goods have been duly reported at ICC and only defect pointed out is with regard to quantity of goods?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee, is engaged in the business of manufacturing of medical equipments at Baddi which are sold to various dealers all over India. In the normal course of its business, the assessee sent multipara monitors to M/s Allengers Medical System, Derabassi vide receipts dated 09.07.2013, Annexure A1 to A5. Thereafter, the assessee got order for another 25 monitors for which an invoice dated 09.07.2013 was issued. According to the assessee, as the order was received from the consignee after the loading of goods, its accountant had already left the office by that time. Invoice No. GB SAC 00157 was generated by the other employee of the firm who placed it on the table. The assessee asserts that the driver of the vehicle inadvertently left the said invoice in the office itself. The Driver of the vehicle voluntarily reported the goods at ICC, Zirakpur and produced the documents. However, the ICC incharge suspected that the goods loaded in the vehicle were in excess as shown in the invoice and detained the same on the ground that it required verification. According to the Officer incharge, there were 55 pieces of monitors but the driver of the vehicle had produced the invoice of only 30 pieces and, therefore, 25 pieces were in excess which were being carried without any documents. According to the assessee, the driver of the vehicle had inadvertently left the invoice of 25 monitors at Baddi premises but the goods receipt which was accompanying the vehicle was for 55 monitors. The invoice of 25 monitors was produced before the Officer at 3:00 PM in the afternoon on the same day itself. However, the Officer

issued notice under Section 51(7)(c) of the PVAT Act to the assessee. In response to the said notice, the assessee appeared before the Detaining Officer on 15.07.2013 and apprised him of the entire position. After examining the record, the Detaining Officer imposed a penalty of ₹ 10,12,726/- vide order dated 15.07.2013, Annexure A.6, under Section 51(7)(c) of the PVAT Act including tax under Section 51(12) of the PVAT Act. According to the appellant-assessee, the Officer had imposed tax under Section 51(12) of the PVAT Act despite the fact that names of the consignor and consignee were duly available with him. Aggrieved by the order, the assessee filed appeal before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala, contending that there was no attempt to evade the tax as the goods had been voluntarily reported at the barrier. The imposition of tax under Section 51(12) of the PVAT Act was also challenged. Vide order dated 14.08.2015, Annexure A.7, the appeal was dismissed. The appellant-assessee filed further appeal before the Tribunal alongwith application for condonation of delay. The said appeal was partly allowed vide order dated 2.05.2017, Annexure A.9 passed by the Tribunal, setting aside the tax levied under Section 51(12) of the PVAT Act but upheld the penalty under Section 51(7)(c) of PVAT Act. Hence, the instant appeal by the appellant-assessee.

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

5. After examining the documentary as well as oral evidence on record, it has been categorically recorded by the Tribunal that undisputedly there were 55 multipara monitors in the vehicle. The goods receipt so produced also indicated the same number of monitors. The assessee produced VAT invoice for only 30 multipara monitors when the goods were apprehended and the goods did not coordinate to the goods receipt and

VAT invoice No. 00156 dated 09.07.2013 related to only 30 monitors. It has been further recorded by the Tribunal that while preparing VAT XXVI-A of the Excise and Taxation Officer, Himachal Pradesh, the assessee furnished the information to the Excise and Taxation Department, Himachal Pradesh that there were only 30 monitors. Further while reaching at the ICC, Zirakpur, it was informed that there were only 30 multipara monitors in the truck and the information regarding 25 multipara monitors was concealed. The sale invoice regarding extra goods produced much after retention of goods appeared to have been manipulated. The VAT invoice Nos. 156 and 157 were not prepared at one and the same time because both the invoices bore the signatures of different persons. Similarly, though the goods were apprehended at 9:00 AM on 10.07.2013, yet the VAT invoice No. 00157 dated 09.07.2013 was produced at 3:00 PM on 10.07.2013. Thus, it was inferred that the said invoice was issued after the excess goods were detained. It was concluded by the Tribunal that there was intention to evade the tax on the part of the assessee. With regard to penalty under Section 51(12) of the PVAT Act, it was recorded that since the transporters had disclosed the information regarding the consignor and consignee of the goods, therefore, no offence under Section 51(12) of the PVAT Act was made out. Consequently, penalty under Section 51(7)(c) of PVAT Act was imposed to the tune of ₹ 7,87,500/-. The relevant paras of the order passed by the Tribunal read thus:-

> "There is no denying a fact that there were 55 multipara monitors in the truck. The GR so produced also indicates that there were 55 multipara monitors in the Truck. It is also a fact that the appellant produced VAT invoice for only 30 multipara monitors when the goods were apprehended and the goods did not coordinate to the GR and VAT invoice No. 00156 dated

09.07.2013 which related to only 30 boxes (monitors). The intention to evade the tax on the part of the appellant could be gathered from very beginning. While preparing VAT-XXVI-A of the Excise and Taxation Officer, Himachal Pradesh, the appellant furnished the information to the Excise and Taxation Department, Himachal Pradesh that there were only 30 monitors. Not only this, the appellant while reaching the ICC, Zirakpur, also informed that there were only 30 multipara monitors in the truck and he concealed the information regarding 25 multipara monitors. The information generated on Form XXXVI also relates to 30 multipara monitors. The sale invoice regarding extra goods produced much after retention of goods is not a genuine document and appears to have been manipulated in order to plughole the retention. The VAT invoice Nos. 156 and 157 were not prepared at one and the same time because both the invoices bear the signatures of different persons (consignors). Similarly, though the goods were apprehended at 9:00 AM on 10.07.2013, yet the VAT invoice No. 00157 allegedly, the dated 09.07.2013 was produced 3:00 PM on 10.07.2013. Thus, inference would be drawn that this invoice was issued after the excess goods were detained. Had the appellant been in possession of the invoice No. 00157 relating to 25 multipara monitors at that time, then he would have generated the same in VAT-XXVI-A prepared by the Excise and Taxation Officer, Himachal Pradesh. Thus, guilty intention to evade the tax on the part of the appellant is apparent.

Now coming to the penalty under Section 51(12) of the Act since the transporter had disclosed the information regarding the consignor and the consignee of the goods, therefore, no offence under Section 51(12) is made out.

Now coming to the penalty under Section 51(7)(c) of the Act, the said provision provides for the penalty equal to 50% value of the goods involved. In the present case, the value of the goods involved were of the value of ₹15,75,000/-, therefore, the Designated Officer appears to have not properly

> calculated and imposed penalty and the penalty to the tune of ₹ 10,12,726/- appears to be on higher side as according to Section 51(7)(c) of the Act, a penalty to the tune of ₹ 7,87,500/- should have been imposed under Section 51(7)(c) of the Act against the appellant.
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> Resultantly, this appeal is dismissed with the modification that the appellant shall pay the penalty to the tune of ₹ 7,87,500/- under Section 51(7)(c) of the Act instead of Rs. 10,12,726/-. However, no penalty can be imposed under Section 51(12) of the Act of 2005."

6. Adverting to the judgments relied upon by the learned counsel for the appellant-assessee, it may be noticed that in ***Ganpati Foods Vs. State of Punjab and another***, (2014) 67 VST 348(P&H), there was dispute about verification of documents accompanying the goods. The Tribunal without examining the authenticity of the documents had, on suspicion, concluded that there was an attempt to evade tax on the part of the dealer. It was held that in view of the documents, no conclusion could be drawn that the declaration was not obtained with a view to evade tax unless the documents were rejected on the ground that they were not genuine.

7. In ***M/s LG Electronics India Private Limited Vs. The State of Punjab and another,*** VATAP No. 16 of 2012 decided on 03.12.2013, the issue was whether the Tribunal was justified in upholding the penalty under Section 51(7)(b) of the PVAT Act merely on account of clerical mistake in the documents which were produced voluntarily at ICC without establishing any attempt to evade the tax. After examining the matter, the explanation furnished by the appellant was held to be bonafide. Similarly, in ***M/s Balaji Trading Company, Rewari Vs. The State of Haryana and another,*** 2016 SCC online P&H 4741, the issue was with regard to recording a finding by

the Tribunal about the genuiness of the documents accompanying the goods. In ***Amrit Banaspati Company Limited Vs. State of Punjab and others,*** (2001) 122 STC 323, vires of Section 14-B of the Punjab General Sales Tax Act, 1948 were challenged. All these decisions being based on individual fact situation involved therein, the assessee cannot derive any advantage from the said decisions.

8. The findings of fact recorded by the authorities below have not been shown to be illegal or perverse by the learned counsel for the appellant-assessee, warranting interference by this Court. No substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed. In view of dismissal of the main appeal on merits, the question of condonation of delay in filing the appeal is left open.

(Ajay Kumar Mittal)
Judge

January 29, 2019
'gs'

(Harnaresh Singh Gill)
Judge

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