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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 111/2019**

+ **ITA 122/2019 & CM Appl. 5314/2019**

THE PR. COMMISSIONER OF INCOME TAX -7 Appellant

Through: Mr.Ruchir Bhatia, Sr.Std.Counsel
with Ms.Vibhuti Malhotra, Advocate

versus

PADMINI VNA MECHATRONICS PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **04.02.2019**

1. The Revenue in this appeal under Section 260A is aggrieved by the ITAT's order, which had affirmed the Appellate Commissioner's decision, setting aside a reassessment order.

2. The substantial question of law raised is that the lower appellate authorities have returned unreasonable and perverse findings on merits. For Assessments Year 2006-07 & 2007-08 reassessment notices were issued to the assessee, on the ground that the latter had made bogus purchases. The assessee manufactured various kinds of automobile parts and electronic parts. The precise complaint was that the two concerns, M/s Om Industrial Corporation (OIC) and M/s Techno Enterprises were shown as sellers of raw material in respect of the substantial quantities. The Revenue alleged that

the purchases reflected from these sources were bogus. The Revenue relied upon the survey proceedings under Section 133 as well as the statements made under Section 133A. It further relied upon the statement made allegedly by bogus entry providers, who stated that the amounts claimed by the assessee as expenditure were of fictitious and bogus nature. The AO acted upon these and disallowed the expenditure to the tune of ₹1,39,41,577/- & ₹55,03,963/-. Upon appeal the CIT(A) considered the explanation and also various documentary evidence on record. These included the forms evidencing deposit of VAT dues; the D-3 Transit/Transport challan, stock register maintained at the assessee's factory premises, the relevant central excise gate passes/records of purchases in the statutory register RG-1 etc. After considering these the CIT(A) was of the opinion that the even though initiation of re-assessment was justified, the addition made in the reassessment proceedings, was not justified. The CIT(A)'s reasoning is as follows:

“The AO has also made a reference to the bank Accounts of these concerns showing cash withdrawal for returning the money to the beneficiaries. In view of these broad findings, the AO reached to the conclusion that the purchases made from these parties are not genuine. The AO however, could not point out any discrepancy in the documents and records, including stock register produced before him. In this case, I find that all the, purchases are evidences by purchase invoices. All the 3 parties are registered with VAT and having TIN nos. as mentioned in the invoices. All the 3 parties are at Faridabad / Haryana. The purchases are made by the appellant at it's Gurgaon factory. For every sale from Faridabad / Haryana to Gurgaon, the seller party has to obtain advance D - 3 Vat Form from Faridabad VAT Deptt. This form is to be accompanied with the purchase invoice during transportation of goods from the seller to the buyer. The purchase invoice, D - 3 VAT form and the physical goods transported are inter - sea matched by

the Vat Deptt. at the border. The VAT Deptt. after verification, put its seal on the D - 3 form. In this case, for all the 3 parties all such documents have been produced by the appellant. It undoubtedly shows the movement of goods from Haryana to Gurgaon. On receipt of goods, a receipt is entered in the gate entry register by the Security guard on the gate who after physical verification of the goods put a seal on the back of the invoice. This seal mentions the particulars of gate entry no., date and initial of security guard. Then, the goods are received in store where its receipts are entered in the stock register. Then the movement of goods from the stores to production Deptt. is also recorded in the Stock Register. The copies of relevant stock records showing this movement has also been produced before AO wherein no discrepancy has been noticed. The unit is covered under the Excise Act. The production, and its sale is recorded in the Excise records. All these records were produced and filed before the AO wherein, again no discrepancy has been noticed. All these documents show the movement of goods from Haryana to Gurgaon factory of the appellant and thereafter issuance for production and ultimately culminating into sales. The Excise records are audited periodically by the Excise Deptt. Purchase also needs to be reported to the VAT Deptt. through VAT returns. The purchases from these parties also stood declared to the VAT Deptt. which after verification, accepted the same. The appellant also filed a certificate from the Production manager along with details of production wise clearance which clearly shows that these items were used and consumed by the Production Deptt. As explained by the appellant, these purchases constitute the raw material for manufacturing "valves" which is the end product of the appellant which valves are sold to Original Equipment Manufacturing companies like Maruti, Mahindra, Tata etc., etc., wherein this item is being used as a motor part. In this case, complete documentary evidences have been filed before the AO wherein no discrepancy has been pointed out. The payment for purchases had been made through cheques.

3. On the basis of the above reasoning, the CIT set aside the final reassessment order which had disallowed the expenditure. The Revenue's

appeal before ITAT was unsuccessful. On behalf of the Revenue, it is urged that the findings of the Appellate Commissioner and ITAT cannot be sustained because they did not give any credence to the statements recorded under Section 133A. It is further stated that mere deposit of amounts to D-3 challan, did not signify that the goods were actually purchased or had been consumed as alleged by the assessee.

4. This Court is of the opinion that the assessee did not rely merely upon the deposit of the amount but rather movement of the goods, which is borne out by the VAT authorities' stamp on transit challan i.e. chungi, at the border.

5. Furthermore, other evidence such as the stock register, factory certifying the receipt of the goods as and when they were moved into the premises; clearly recorded in the statutory central excise registers RG-1 etc., were sufficient proof to show that the purchases were not bogus. Moreover, the CIT(A) re-apprised all the evidence, unlike the AO, who was largely influenced by the so-called credit entry providers.

6. This Court is of the opinion that having regard to the detailed analysis of the CIT(A), with which the ITAT's finding concurred, no question of law arises.

7. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 04, 2019

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