106 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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VATAP-215-2019 (O&M)
DECIDED ON: FEBRUARY 10, 2020

M/S BHARAT IRON AND BRASS FOUNDARY

APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Piyush Kant Jain, Advocate
for the appellant.

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AJAY TEWARI, J (Oral):

CM Nos. 13348-13349 CII of 2019

In view of averments made in the applications the same are allowed and delay of 26 days in re-filing as well as 80 days in filing the present appeal is condoned.

VATAP No. 215 of 2019

This appeal has been filed against the order of the authorities below confirming the imposition of penalty on the appellant.

2. On 20.10.2011 in a case of road side checking, machinery in dispute was found in a truck at Kaithal. D-3 forms prescribed by the Haryana Value Added Tax Act, 2003 (for short 'HVAT Act') was not accompanying the goods and therefore the goods were detained. Subsequently, the goods were released and during penalty proceedings appellant produced photocopy of D-3 form. The vehicle number was not mentioned in that form. The penalty was imposed and confirmed, as mentioned above.

3. Before us the following questions have been raised;

(i) Whether any tax can be due under the HVAT Act on the transaction of inter-state purchase of CMC Lathe Machine, a capital asset of appellant?

(ii) If answer to question(i) above is yes, whether an attempt to evade such tax can be presumed if CNC Lathe Machine did not accompany VAT D-3 inward form despite the facts that there were a genuine excise invoice for inter-state sale a pre-existing purchase order having serial number of VAT D-3 inward form written on it and all payments made through bank?

(iii) Whether the purchased-appellant would be presumed to have made an attempt to evade tax if the seller to whom VAT D-3 inward form was sent with purchase order inadvertently omitted to hand it over to the Transporter before the movement of goods commenced for Ambala?

(iv) Whether inadvertent omission to carry VAT D-3 inward from with the goods by itself is sufficient to presume that an attempt to evade tax due under the HVAT Act on those goods have been made?

(v) Whether such presumption is rebuttable and if rebuttable whether the explanation given by the appellant and documents produced in this case before checking officer including original VAT D-3 inward form, sufficiently rebutted such presumption?

(vi) Whether in the facts and circumstances of the case, appellant had any intention to evade any tax even if due under HVAT Act?

(vii) Whether in the facts and circumstances of the case, Ld. Tribunal was factually and legally right in holding that it could be a repeat transaction on same set of transaction whereas checking officer did not gave such finding?

(viii) Whether, the Ld. Tribunal was legally justified in not setting aside the penalty order (Annexure A-6) and order

of first appellate authority (Annexure A-7).

4. The penalty under Section 31(8) of the HVAT Act was imposed and sustained as the appellant failed to produce VAT D-3 inwards (statutory form) even subsequent to the checking. Only photocopy of the form was produced. No explanation has been given for not producing the original form. Moreover even in the photocopy produced there was no vehicle number filled in VAT D-3. The vehicle number mentioned in the invoice accompanying the goods was PB-11-AU-8658 whereas the goods were being carried in vehicle number PB-11-AJ-8658. It was pleaded that mentioning of the vehicle number was merely an error, assuming it was an error, still the same cannot be over-looked for the reasons that the goods were not being accompanied by VAT D-3 and the copy of D-3 produced subsequently was not having any vehicle number. There is another aspect of the matter, the invoice was dated 30.09.2011 and the goods were checked at Kaithal on 20.10.2011 i.e. after 20 days, no evidence was produced explaining the delay. From Hyderabad to Kaithal it would not take 20 days for a truck. There was another consignment in the same truck from Hyderabad to Himachal Pradesh, for the said goods there was an invoice dated 10.10.2011. All the said aspects weighed with the authorities below to impose and sustained the penalty.

5. In view of the said factual aspect the factual findings were recorded. No interference is called for in the order of the Tribunal.

6. A perusal of the questions reveals that these are all questions of fact and learned counsel has also argued this appeal on the factual aspect of *mens rea*. It is his contention that the documents accompanying the goods and the documents which were subsequently placed on record unequivocally

reveal that there is no *mens rea* and therefore, imposition of penalty is unjust. It is trite to say that the state of a man's mind is as much question of fact as the state of his digestion.

7. Dismissed.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 10, 2020
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No