IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

GSTR No. 21 of 1997
Date of decision: February 19,2020

M/s Behari Lal and sons

.. Applicant

v.

The State of Punjab

.. Respondent

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

Present: Mr. Sandeep Goyal, Advocate for the applicant.
Mr. Pankaj Gupta, Additional Advocate General, Punjab.

...

AVNEESH JHINGAN, J.

By way of reference under Section 22 of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), the following question has been referred for opinion:

> "Whether on the facts and circumstances of the case, the petitioner was entitled to the deductions under section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948?"

The brief facts are that the assessee was engaged in trading of AC sheets, angles and hardware goods. For the assessment year 1983-84, returns were filed and the assessment was finalised on 2.2.1987. The order was taken up in revision on the ground that the goods purchased from the petitioner were not mentioned in the registration certificate of the purchasing dealer hence deduction under Section 5(2)(a)(ii) was dis-allowed vide order dated 31.3.1989. The revision filed before the Sales Tax Tribunal, Punjab (for short, 'the Tribunal') was dismissed on 28.6.1993.

Before dealing with the question, relevant provisions are reproduced below:

> "**Section 5(2)(a)(ii) of the Act**
>
> **5. RATE OF TAX--**
>
> xx xx xx
>
> (2) In this Act the expression 'taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom--
>
> (a) his turnover during that period on--
>
> xx xx xx
>
> (ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (1A), declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods other than goods declared tax-free under section 6,

for sale in Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India and on sales to a registered dealer of containers or other materials for the packing of such goods:

PROVIDED that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods.

xx xx xx"

Rule 26 of the Punjab General Sales Tax Rules, 1949 (for short, 'the Rules'), form ST-IV and form ST-XXII are also reproduced below:

" RULE-26

(1) Any dealer, who wishes to deduct from his gross turnover the amount in respect of sale on the grounds that he is entitled to make such deduction under the provisions of sub-clause (ii) of clause (a) of sub-section (2) of section 5, shall obtain a declaration duly filled in and signed by the purchasing dealer or his agent, as prescribed under rule 55-A.

(2) The selling dealer shall prove to the satisfaction of the assessing authority, the genuineness of his claim by producing the said declaration in respect of sale of such goods at the time of assessment or when called upon to do so, by notice, by a competent authority under the Act.

FORM S.T.IV

Certificate of Registration
(See rule 5 of the Punjab General Sales Tax Rules, 1949)

______________District

This is to certify that the firm known as _________ whose head office in Punjab is situated at __________ has been registered as a dealer under the Punjab General Sales Act, 1948.

2. The business is :-
Wholly
Mainly
Partly
Partly
Partly

3. The dealer has additional places of business and warehouses at the addresses noted below:

4. The sale of the following goods other than goods liable to tax at the first stage of sale under section 5(1-A) made to this dealer for use by him in the manufacture in the State of Punjab of any goods, other than goods declared tax-free under setion 6, for sale in Punjab will be free of tax.

5. The return in form S.T. VII pertaining to the entire business conducted at the various places of business of the dealer shall be furnished by the dealer from the head office quarterly/monthly.

6. The tax is payable quarterly/monthly.

7. This certificate is valid from __________until cancelled.

Seal of Assessing Authority — Signature Assessing Authority

Dated ___________ — ____________District

Notes – (1) This registration certificate shall be displayed by the dealer at the place of business and it shall be produced for inspection on demand by any person exercising authority under the Act and these rules.

(2) Any change in the name of the firm should be notified within 30 days and the registration certificate got amended accordingly.

FORM ST-XXII

DECLARATION

A. (Counterfoil to be retained by the purchaser) FORM ST.XXII (See rules 26 and 27-A Issued to M/s __________ R.C. No.___________ dated ______________ on ______________ for goods valued at Rs.____________ _ Under Rupees No.	U N D E R R U P E E S	B. (To be retained by the seller) FORM ST.XII (See rules 26 and 27-A) - R.C. No.----- Dated -------- I hereby declare that I have purchased the goods detailed overleaf for Rupees -----(Rs.--------only) from M/s. --------- R.C. No.------- dated----- for the purpose mentioned below:- (1) Use in the manufacture in Punjab of goods, other than goods declared tax-free under section 6 for sale in Punjab; or (2) Re-sale in the State of Punjab; or (3) Sale in the course of inter-State trade or commerce; or (4) Sale in the course of export out of territory of India. And the goods so purchased have actually moved into my custody and have duly been entered into my books of account and goods purchased for the purpose mentioned at (1) above are duly specified in my registration certificate No.--- Signature of the Purchasing dealer ↑ Please tick which is applicable	U N D E R R U P E E S	C. (To be furnished by te selling dealer to the Assessing Authority with the return) FORM ST. XII (See rules 26 and 27-A) - - - - - - - - - - - - - - - - R.C. No.---- dated------ I hereby declare that I have purchased the goods detailed overleaf for Rupees ----- (Rs.----only) from M/s --------- R.C. No.------ dated------- for the purpose mentioned below:- (1) Use in the manufacture in Punjab of goods, other than goods declared tax-free under section 6 for sale in Punjab; or (2) Re-sale in the State of Punjab; or (3) Sale in the course of inter-State trade or commerce; or (4) Sale in the course of export out of the territory of India. And the goods so purchased have actually moved into my custody and have duly been entered into my books of account and goods purchased for the purpose mentioned at (1) above are duly specified in my registration certificate No.------ Signature of the Purchasing Dealer ↑ Please tick which is applicable

REVERSE							
Memo No. and date issued by selling registered dealer	Description of goods	Quantity	Price	Memo no. and date issued by selling registered dealer	Description of goods	Quantity	Price
1	2	3	4	1	2	3	4
		Total				Total	

Section 5 of the Act prescribes rate of tax. Sub-section (2) thereof provides for calculation of 'taxable turnover'. In the eventualities mentioned in the sub-clauses, the deduction is to be made from the gross turnover and net would be the taxable turnover. To decide the present issue, sub-section (2)(a)(ii) to Section 5 of the Act would be relevant. It provides that sales made to a registered dealer of the goods (except goods taxable at first stage) intended to be re-sold in Punjab or in the course of inter-State trade or commerce or to be exported out of India or the goods specified in the registration certificate of the purchaser for use in manufacture of goods, for sale are to be deducted from the gross turnover. Rule 26 prescribes the procedure for availing deduction under Section 5(2)(a) of the Act and provides for furnishing of declaration in form ST-XXII. Form ST-IV is the proforma of registration certificate, its Clause 4 gives the details of goods the dealer is entitled to purchase for use in manufacture. Form ST-XXII is the prescribed declaration form to be issued by the purchasing dealer to the selling dealer for claiming deduction under Section 5(2)(a).

The declaration form mentions four purposes for which the goods are intended to be purchased.

It is not disputed that the purchasing dealers were registered dealers and that in most of the declaration forms the purpose for purchase was not tick-marked. The claim of the petitioner was rejected holding that the goods sold were not specified in the registration certificate.

We are not in agreement with the view taken. From the provisions quoted above, it is evident that deduction is allowed of sales made to the registered dealer, of goods for resale or goods mentioned in registration certificate for use in manufacture of goods for sale. From the Clause 4 of form ST-IV, it is clear that only the goods which can be purchased for use in manufacture are mentioned, there is no list of goods intended to be re-sold.

The deduction cannot be disallowed for non-specification of goods in the registration certificate where the dealer is registered for re-sale or is involved in trading also. The position would be different if the dealer is not registered for trading, in that case even non-scoring of purpose of purchase would be of no relevance as in such eventuality, only the goods specified in the certificate of registration can be purchased for use in manufacture.

In view of the above, the question is answered accordingly.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 19, 2020
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No