IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 231 of 2019
Date of decision: January 15, 2020

M/s Sanjivani Non Ferrous Trading Pvt. Ltd.
.. Appellant

v.

State of Haryana and another
.. Respondents

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

Present: Mr. Rajiv Sharma, Advocate for the appellant.

...

AVNEESH JHINGAN, J.

The present appeal is filed under Section 36 of the Haryana Value Added Tax Act, 2003 (for short, 'the Act') against the order dated 25.2.2019 passed by the Haryana Tax Tribunal, Chandigarh upholding the penalty imposed under Section 31(8) of the Act. Following substantial questions of law have been claimed:

> "(a) In the facts and circumstances of the case whether it is just and proper for the authorities to impose advance tax and penalty when the goods detained were admittedly accompanied by all the required documents as per the provisions of Section 31(2) of the HVAT Act ?
>
> (b) In the facts and circumstances of the case is it just and proper for the authorities to impose penalty just on the basis of statement of the driver, even though the goods

are accompanied by genuine documents ?

(c) In the facts and circumstances of the case is it just and proper for the authorities to impose penalty without making detailed inquiry to establish that there was an attempt to evade tax.

(d) In the facts and circumstances of the case is it just and proper to consider a series of two sale transactions immediately preceding the impugned one as 'sale in transit', whereas there is no such provision in the HVAT Act, 2003 ?

(e) In the facts and circumstances of the case is it just and proper to hold that the invoices related to previous sale transactions are required to be produced at the time of road side checking along with invoice showing current sale ?

(f) In the facts and the circumstances of the case is it just and proper for the Tribunal and the Authorities below to twist and misinterpret the true statement of the incharge of the goods to somehow make out a case for penalty under Section 31(8) of the Act ?"

The facts in brief are that on 16.11.2015, Assistant Excise & Taxation Officer (Enforcement)-cum- Taxing Authority, Palwal (hereinafter described as 'the Penalising Officer') during road side checking at Palwal checked the vehicle No. HR-38N-5267 carrying aluminium scrap. The driver produced Excise Invoice dated 10.11.2015 issued by M/s CMR Nikkei India Pvt. Ltd., Bawal, Rewari (hereinafter described as 'the consignor') in favour of M/s Century Metal Recyling Pvt. Ltd., village Tatarpur, District Palwal (hereinafter described as 'the consignee') and also GR No. 19594 dated 10.11.2015 issued by M/s Nice Cargo Movers, New Delhi for movement of goods from Bawal to Tatarpur. The statement of the driver-cum- person in-charge of the goods was recorded and he stated that the goods were loaded on 10.11.2015 in the vehicle from ICD, Dadri for Palwal. As the documents showed movement of goods from Bawal to Palwal, which was in contradiction with the statement of the driver, the vehicle was detained under Section 31 of the Act. In response to the show cause notice, Mr. Shelender Pathak, authorised representative of the appellant as well as for the consignee appeared and got the goods released against the surety bond. During penalty proceedings, reply was filed but no documents were produced inspite of having been written in the reply that the relevant documents were placed before the Penalising Officer. None appeared on the final date, vide *ex-parte* order dated 4.12.2015, penalty of ₹4,08,819/- under Section 31(8) of the Act was imposed and advance tax of ₹1,36,274/- charged. Appeal was preferred before the Joint Excise and Taxation Commissioner (Appeals), Faridabad (hereinafter described as 'the Appellate Authority'), the same was dismissed on 3.8.2016. Further appeal filed before the Tribunal, was also dismissed on 25.2.2019, hence the present appeal.

Learned counsel for the appellant argued that the penalty was wrongly imposed and upheld inspite of the fact that the goods were accompanied by proper and genuine documents. The grievance raised is that no proper enquiry was held before imposing the penalty.

The contentions raised by learned counsel for the appellant are not well founded. There is no dispute raised even at this stage that the statement of the driver was correct and that the goods were loaded from ICD, Dadri on 10.11.2015 for Palwal. The stand of the appellant was that the goods were imported out of India got cleared on 9.11.2015, these were stock transferred to its branch at Bawal and thereafter, sale was made on 10.11.2015 to the consignor who further on the same day sold the goods to the consignee.

It would be worth taking note of at this stage that the documents with regard to import of goods, transfer from ICD, Dadri to the consignor and further sale to the consignee were never produced before the Penalising Officer.

The stand taken by the appellant before the Penalising Officer fell flat, firstly for the reason that the appellant never produced the documents with regard to the earlier transaction which were bound to be in possession of the appellant. Secondly the goods were cleared from ICD, Dadri on 9.11.2015 and then sold by the consignor to the consignee on 10.11.2015, there was delay of six days in between the said sale and the date of checking. No explanation was put forth for the said delay. Lastly the stand taken was contradicted by the statement of the driver.

The appellant in order to fortify the stand produced before the Appellate Authority and the Tribunal GR No. 2111 dated 9.11.2015 issued by M/s Nice Cargo Movers, New Delhi. From the GR, it rather established that the stand taken was after-thought. GR No. 2111 dated 9.11.2015 was for the earlier transaction whereas the goods were being accompanied by GR No. 19594 dated 10.11.2015 for the subsequent sale. It shows that the

GR produced in appeal was got issued afterwards as for the earlier transaction GR of subsequent serial number was issued.

There is another aspect of the matter that in case the appellant had sold the goods to the consignor, there was no occasion for the representative of the appellant and of the consignee to appear in the penalty proceedings and to get the goods released. The affected parties would have been the consignor or the consignee and not the appellant.

Before the Tribunal, the appellant changed its stand and stated that the goods were sold in transit by its Bawal branch to the consignor who further sold the goods to the consignee.

The case set up by the appellant before the Tribunal is not acceptable. In case it was sale made in transit, there would have been endorsement on the GR. Moreover, the driver in that case would be carrying the documents with regard to movement of goods from ICD, Dadri to Bawal.

In view of the above, no interference is called for in the order of the Tribunal. No question of law much less a substantial question of law arises.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

January 15, 2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No