IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

VATAP No.6 of 2019(O&M)

Date of Decision:-20.01.2020

M/s Mangla Oil Mills.

......Appellant.

Verus

The State of Haryana & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Rishab Singla, Advocate for the Appellant.

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JASWANT SINGH, J.

1. Through the instant appeal under Section 36 of Haryana VAT Act, 2003 (for short 'Act') the Appellant is assailing the order dated 28.5.2018 (Annexure **A-7**) passed by Haryana VAT Tribunal, Chandigarh (for short 'Tribunal').

2. The facts emerging from records are that the Appellant, a partnership firm, is a registered dealer engaged in the manufacturing of Cottonseed Oil and Oilcakes at its unit situated in Cheeka (Kaithal), whose premises was inspected by VAT Authorities on 3.6.2013. The Authorities during inspection found variation in physical stock vis-a-vis stock as per books of accounts. The Assessing Authority, Kaithal vide order dated 12.08.2013 levied tax on suppressed sale/purchase apart from penalty under

Section 38 of HVAT Act. The Revisionary Authority issued a notice calling upon the Appellant to Show Cause as to why assessment order should not be revised on the ground that Asessing Authority hadnot considered difference in stock in true perspective. The Revisionary Authority vide order dated 02.11.2015 levied tax on value of 522.08 Qtls of binola stock and 4.28 Qtls of binola oil stock and remanded the matter back to Assessing Authority for examination on the point of penalty under Section 38 of the Act. The Appellant preferred an appeal before Tribunal which came to be dismissed vide impugned order dated 28.05.2018.

3. The Appellant has raised the following questions of law for the consideration of this Court:-

a) Whether on the facts and circumstances of the case, the order dated 28.05.2018 dismissing the appeal was a non speaking order as the issues were not properly dealt even though the same were duly apprised to the learned Tribunal?

b) Whether on the facts and circumstances of the case, the learned Tribunal was justified in uploading the order of Revisional Authority whereas the combined stock variation of excess and short stock was not more than 2% to 3% the total stock which was to be ignored in view of the inherent discrepancies at the time of inspection?

c) Whether on the facts and circumstances of the case, the Revisional Authority wronglyassumed the jurisdiction in terms of Section 34 of the Act as he failed to prove any illegality and impropriety in the assessment order?

4. Learned Counsel for the appellant vehemently contended that Revisionary Authority had arbitrarily revised assessment order and learned Tribunal without looking into merits of the case has dismissed the appeal. The impugned order is based upon assumption and presumption because there was no shortage or excess of binola, oil and khal. The alleged excess

strock of 744.03 Qtls. of binola was lying in stock as raw material. No actual physical verification took place and there is always possibilities of variation of 2-3% while taking physical stock.

5. After hearing learned Counsel for the appellant and having scrutinized the record of the case, we find that the present appeal is bereft of merits and deserves to be dismissed. Learned Tribunal vide order dated 28.05.2018 has recorded its findings as below:-

> " We have carefully considered the matter. The aforesaid contention raised by counsel for the appellant is infructous because the aforesaid benefit of tax and penalty of 221.15 Qtls. Of binola has already been given by the Revisional Authority. Revisional notice mentioned the total stock different of 744.03 Qtls. of binola. However, while levying tax, the Revisional Authority deducted 22.1.15 Qtls. of binola (which had been considered by Assessing Authority) and levied tax on the remaining 522.88 Qtls. of binola stock difference only. Even according to grounds of appeal, total difference of binola stock was found to be 744.03 Qtls. The Assessing Authority levied tax and penalty on 221.15 Qtls. of binola. Thus, the Revisonal Authority rightly levied tax on the remaining 522.88 Qtls. binola stock difference, besides levying tax on binola oil stock difference of 4.28 Qtls. The Assessing Authority has also been rightly directed to examine the point of penalty on the aforesaid stock difference under Section 38 of the HVAT Act. Penalty proceedings have not been initiated or ordered to be initiated by the Revisional Authority for the first time. On the other hand, the Assessing Authority had already imposed penalty on the assessee under Section 38 of the HVAT Act. Consequently by revising penalty order of the Assessing Authority, the Revisional Authority could direct the Assessing Authority to examine the point of penalty under Section 38 of the HVAT Act regarding the additional tax demand created on the Revisional Authority also.
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> For the reasons aforesaid, we find no error, infirmity or illegality in the impugned orders of the Revisional Authority so as to warrant interference therewith at our hands. The appeal is devoid of

merits and is dismissed. ”

6. On reading of the above findings and after hearing arguments of counsel for the appellant, we find that issues raised by Appellant are pure question of facts and no question of law is involved. The dispute is confined to difference in physical stock vis-a-vis books of account. The matter has already been examined at different levels and we do not find any question of law involved in the present Appeal. The appellant is simply disputiong few facts which stand dealt by different Authorities including Tribunal. This Court while sitting in Appeal cannot disturb findings of fact recorded by Tribunal unless and until findings are perverse and contrary to record. The Counsel for the appellant has failed to point out any perversity in the impugned order, thus no interference is warranted at this stage and accordingly the present appeal stands **dismissed**.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

January 20, 2020
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***