IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No.295 of 2019 (O&M)
Date of decision : 20.07.2022

M/s Bajrang Petro Chemical Pvt. Ltd. Kanpur

....Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

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

PANKAJ JAIN, J.

This is an appeal preferred under the provisions of Section 36 of the Haryana Value Added Tax Act, 2003 (for short, 'the Haryana VAT Act').

2. The factual matrix that needs to be noticed herein is that the appellant is an assessee under the Uttar Pradesh Value Added Tax Act, 2004 engaged in trading of chemical goods and is based at Kanpur. On 11th of June, 2016 at about 5.30 am a vehicle bearing Regd. No.HR-63A-6785 was stopped. It was found loaded with Hexane which is said to be an organic chemical. On demand driver of the vehicle produced the following documents :-

(i) GR, issued by M/s. Ridhi Sidhu Bulk Carriers, Gujarat, whereby consignor and consignee were shown as Bajrang Petro Chemicals Pvt Ltd, Kandla and Kanpur respectively;

(ii) Transit Pass issued by Gujrat Commercial Tax under Section 69(1) in Form 405 of the Act – from Samarknyali to Uttar Pradesh via route Gundari – consignee as M/s. Bajrang Petro Chemical Pvt Ltd., Kanpur UP;

(iii) Declaration of import ST 38 issued by the department of Commercial Tax, Government of Uttar Pradesh whereas the name of the consignee was shown as M/s. Bajrang Petro Chemical Pvt Ltd., Kanpur UP;

(iv) Duplicate import copy of invoice issued by Indian Custom EDI System Custom House, Kandla;

(vi) Weighing Slip;

(vi) A G.P. 81311 issued by Friends Salt Works & Allied Industries, Kandla wherein name of party Sanman Trade Impex Ltd. Name of the buyer M/s. Bajrang Petro Chemical Pvt Ltd., Kanpur UP;

3. As per the transit pass accompanying the vehicle issued by State of Gujarat in Form-405 dated 8th of June, 2016, the vehicle initiated from Kandla (Gujarat) and was destined to reach U.P. via Gundari. The goods were detained vide Challan dated 11th of June, 2016 which are later on released against surety bonds furnished by M/s. Global Petro. Chemical, Faridabad. Checking officer created demand of Rs.4,05,240/- comprising of advance tax of Rs.1,23,334/- including surcharge and penalty under

Section 31(8) of the Haryana VAT Act r/w Section 9(2) of the Central Sales Tax Act, 1956 (for short, 'the CST Act') vide order dated 22nd of July, 2016. The said order was impugned before the Appellate Authority. The same was dismissed vide order dated 31st of May, 2017. The matter was taken in Second Appeal by the appellant before the Tribunal. Ld. Tribunal while dismissing the appeal found that *mala fide* intention of the appellant to evade tax was written large on the face of the record and found that the penalty has been rightly imposed upon the appellant. Consequently, orders of the penalty passed under Section 31(8) of the Haryana VAT Act r/w Section 9 (2) of the CST Act and the imposition of advance tax and surcharge were held to be as per law. The Tribunal recorded following reasons for dismissing the appeal :-

> (i) The Invoice, Form 405 issued by the State of Gujrat, Form 38 issued by the State of UP and GR issued in favour of the appellant were the documents for the movement of goods from Kandla/Samakhyali (Gujrat) to Kanpur (UP). It was not mentioned in any of the documents that the goods will pass through Faridabad in the State of Haryana.
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> (ii) Goods were checked and detained by the Checking Officer on 11.06.2016 at 05:30 AM in Ballabhgarh issued on 08.06.2016 at 09:10:26 PM from Samakhyali (Gujrat) to Uttar Pradesh view route Gundari, it was clearly mentioned that date

and time for end of the journey as 11.06.2016, 11:55 PM, but it was quite impossible for the vehicle to reach Kanpur (UP) from Faridabad at that time particularly when the vehicle was present in Ballabhgarh, Faridabad on 11.06.2016 at 05:30 AM.

(iii) Contention of counsel for the appellant that the vehicle was coming to Faridabad only to collect money for meeting expensed, whereas Faridabad did not fall on the way from Kandla (Gujrat) to Kanpur (UP) and Haryana was not even a intermediate State between Gujrat to Uttar Pradesh, is unbelievable.

(iv) For coming to Faridabad from the way, the vehicle had to swivel approximately 300 Km. more, which could not be permitted by any prudent businessman and even driver on its own would not prefer such a longer journey of 300 Kms. along with the loaded vehicle.

(v) That the first version of the Driver that the goods have been loaded in the vehicle from Kandla and on the instructions of the owner of the goods were going to Kheri Pul Faridabad, is contrary to the second version being put-forth at the time of arguments.

(vi) And lastly, the driver alongwith loaded vehicle was also moving off route on a totally dugout road which is quite enough to prove the malafide intention of the appellant to evade the tax due to the State of Haryana. Moreover, on asking of Toll Receipt or any other proof for movement of goods after release from Faridabad in relation to delivery thereto at its final destination in Kanpur (UP), counsel for the appellant in first appeal has taken a plea that Toll Receipt etc. were lost and an FIR for loss of these documents was lodged on 21.06.2016 at Faridabad. This plea taken by the counsel is absolutely absurd and not tenable becaused it was not proved from the record where the documents were lost and why not proved from the record where the documents were lost and why the FIR was got lodged in Faridabad.

4. The aforesaid findings recorded by the Tribunal are pure findings of fact. Counsel for the petitioner has not been able to show any perversity therein. No substantial question of law arises to maintain the present appeal under Section 36 of the Haryana VAT Act.

5. Consequently, the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

July 20, 2022
Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No