

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**VATAP No.34 of 2021
Date of Decision: 13.03.2023**

M/s Indore Nitriders ... Appellant
Versus
The State of Punjab and another ... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Sandeep Goyal Advocate,
for the appellant.

Mr. Saurabh Kapoor, Additional AG, Punjab.

MANISHA BATRA, J.

1. The instant appeal has been filed under Section 68 of the Punjab VAT Act, 2005 (for short “PVAT Act”) against the orders dated 06.12.2016 and 03.12.2019 respectively passed by the Punjab VAT Tribunal (for short “Tribunal”).

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the appellant is a dealer duly registered under the Madhya Pradesh VAT Act at Indore. It is a manufacturer of suspension tubes/units and its related components. It has been regularly supplying machinery and machinery parts to Indian Railways. Tenders are being floated in the normal course of its business by Diesel Loco Modernisation Works (for short “DMW”), Patiala Railway Department for purchase of suspension bearing tubes and accessories and other components. The appellant participates in the tenders floated by DMW and supplies machinery etc. against confirmed purchase orders. It is

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submitted that after duly participating in the tender, the appellant received a purchase order dated 13.09.2012 from DMW for supply of 460 sets of suspension bearing tubes and accessories of 10 components for TM 4907. Since the manufacturing of this huge quantity of suspension bearing tubes took time, therefore, the manufactured products were being supplied in intervals. Vide invoice No.264 dated 12.10.2013 for a sum of Rs.21,90,733/-, the appellant had transported 20 sets of suspension bearing tubes from Indore to DMW, Patiala. Goods receipt No.35724 dated 12.10.2013 was also issued by Inter-State Carrying Corporation in this regard. The appellant got the machinery/goods insured from National Insurance Company Limited on 12.10.2013 vide policy Annexure A-7. The goods were even got inspected by officials of RITES which is an engineering consulting company of Government of India and letter (Annexure A-4) had been issued in this regard. The machinery so transported was not for sale or trade as the same was plant and machinery parts to be installed at the Indian Railway Workshop at Patiala. The machineries/goods were accompanied by proper and genuine documents. It was submitted that without knowledge and consent of the appellant, the driver of the truck bearing No.PB-13R-4069 in which the machinery was carried, loaded another consignment of Taramira which was unloaded at Khanna. The Excise & Taxation Officer, Khanna checked the vehicle at the time when Taramira was being unloaded at a godown at Khanna. The driver on demand showed invoice No.12 dated 13.10.2013 and goods receipts issued by South Goods Carrier and also produced Form No.57232 prescribed by Madhya Pradesh Government relating to Taramira. The driver

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also produced invoice No.264 issued regarding transportation of the machinery by the appellant to DMW along with GR and copy of insurance policy etc. However, by making a false allegation that the driver had not produced any documents regarding transportation of the machinery by the appellant, and further alleging that the driver had not reported the goods of the appellant at the ICC while entering State of Punjab, the machineries were detained and case of appellant was forwarded to Assistant Excise and Taxation Commissioner for taking action under Section 51 (7) (c) of the PVAT Act.

3. The appellant submitted reply to notice issued under Section 51 (7) (c) and produced copies of the account books and also clarified that the goods were not for further sale but they were parts of machinery/machinery to be installed at DMW, Patiala and there was no attempt to evade tax. It was also submitted that the invoice and GR etc. of the said goods had been produced by the driver with the Clerk at ICC but the Clerk had not generated Form VAT XXXVI qua the transaction in question. The Penalizing Officer, however, still proceeded to impose penalty upon the appellant and vide order dated 13.11.2013, an amount of Rs.14,08,642/- including tax was imposed as penalty. The appellant filed appeal before the First Appellate Authority who vide order dated 11.08.2014 dismissed the appeal of the appellant by observing that there was an attempt to evade tax on the part of the appellant. The appellant then filed appeal before the Tribunal. The Tribunal vide order dated 06.12.2016 upheld the orders of the authorities below. On 31.12.2016, the appellant filed an application for rectification of the order passed by the Tribunal which was dismissed vide

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order dated 03.12.2019.

4. Feeling aggrieved, the appellant has filed the instant appeal challenging the validity of the orders passed by the authorities below as well as the Tribunal by alleging that the same are wrong and illegal. The goods were transported by the appellant of vehicle No.PB-13R-4069 while being accompanied with proper invoice, GR receipt and other documents including the report of RITES and insurance policy. It was due to the fault of Clerk at ICC that Form VAT XXXVI could not be generated. Even otherwise non-reporting of goods at the barrier by the driver did not amount to attempt to evade tax on the part of the appellant as it was regularly supplying goods to DMW, Patiala which were capital goods and not to be sold further. The consignee was a Government undertaking. The transaction had been duly accounted for. Cryptic orders had been passed by the authorities below and the Tribunal without judicious application of mind. Penalty had been wrongly levied upon the appellant. Even otherwise, merely on the basis of admission of the driver, no penalty could be imposed. Therefore, it was urged that the impugned orders were liable to be set aside. To fortify his argument, learned counsel for the appellant placed reliance upon authorities cited as **M/s. Balaji Trading Company, Rewari v. The State of Haryana and another**, 2016 SCC OnLine P&H 4741; **State of Punjab and others v. Shree Ram Panels**, (2011) 46 VST 424 (P&H); **Ganpati Foods v. State of Punjab and others**, (2014) 67 VST 348; **M/S. Punjab Wool Syndicate v. The State of Punjab and another**, 2023 (2) TMI 96 and **Krish Pack Industries v. State of Punjab**, (2006) 28 PHT 27 (P&H).

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5. Per Contra, learned State counsel for the respondent argued that the orders passed by the authorities below and the Tribunal were well reasoned and no ground had been made out to interfere with the same. The driver of the vehicle carrying the goods of the appellant had intentionally not generated the documents relating to the goods with ICC. He had recorded a statement with the respondents that he had been told by the appellant to not to generate bills and other documents at ICC. This fact was itself sufficient to prove that there was intention on the part of the appellant to evade the requisite tax. The penalty was rightly imposed upon the appellant. Therefore, it was urged that the appeal did not deserve to be allowed.

6. The following substantial questions of law were posed for consideration:-

(i) Whether the facts and circumstances of the case, there is an attempt to evade tax on the part of the appellant as the goods in question were capital goods and were to be consumed by DMW which is a Govt. entity?

(ii) Whether mere non-reporting of goods can be a ground for imposition of penalty though the goods were covered by proper invoice, Goods Receipt and Insurance and no other discrepancy had been pointed out at the time of detention?

(iii) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty on the ground that there had been attempt to evade tax

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though the transaction in question could have been kept out of books of accounts?

(iv) Whether tax under Section 51 (12) can be levied even though the driver produced the documents and disclosed the consignor as well as consignee and the consignor-appellant had appeared before the Penalising Officer?

7. We have heard both the sides at considerable length and have gone through the record. The claim of the appellant was that vide purchase order Annexure A-3, DMW Patiala had placed order for 460 sets of suspension bearing tubes and accessories with it. Twenty of these sets were manufactured by it and had been transported on 12.10.2013 on vehicle bearing No.PB-13R-4069 for delivering the same at DMW, Patiala. Copy of inspection certificate prepared by RITES Limited with regard to those goods along with invoice Annexure A-5 and goods receipt had been handed over to the driver. The goods were even insured by National Insurance Company Limited and letter Annexure A-7 was issued in this regard on 12.10.2013 itself. According to the respondents, the vehicle No.PB-13R-4069 was checked at Khanna on 17.10.2013 while Taramira was being unloaded from the same at Khanna. The goods receipt with regard to Taramira was shown by the driver along with declaration in Form VAT-XXXVI as issued by ICC Dhaba Gujran but the goods consigned by the appellant were also found lying in the same qua which neither any Form VAT XXXVI was produced nor documents relating to those goods were produced by the driver of the vehicle at ICC of Punjab State. The case of the appellant is that the goods in

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question were duly accompanied by invoice/GR/insurance policy and inspection note. The Taramira was loaded on the vehicle No.PB-13R-4069 without knowledge and permission of the appellant. It was due to some ignorance that the driver of the vehicle could not generate the declaration qua these goods at ICC. The Tribunal while adjudicating the appeal filed by the appellant had recorded a finding that the invoice No.264 dated 12.10.2013 relating to the goods in question had been recovered from driver. Undoubtedly, it is mandatory under the provisions of the PVAT Act that the carrier of the goods while entering or leaving the limits of a Punjab State will generate information about the goods at the nearest ICC which was not proved to be shown by the driver in the instant case. However, in our opinion, from this act of driver only, no interference can be drawn that the declaration was not obtained with a view to avoid payment of tax. Reliance in this regard can be placed upon **Ganpati Foods's** case (Supra) & **M/s Jain Shawls, Bahadarke Road, Dana Mandi, Ludhiana v. State of Punjab**, (2010) 36 PHT 65 (P&H) (PVAT) wherein non-generation of declaration at ICC was considered to be not sufficient enough to arrive at a conclusion that an attempt to evade tax was made.

8. Further, merely on the basis of statement alleged to have been made by the driver that he had been told by the appellant to not to generate bills, no penalty could be imposed upon the appellant in our opinion. In this regard, we draw reliance upon the judgments cited as **Krish Pack Industries's** case (Supra) wherein penalty had been imposed only on the admission of the driver without considering the documents on record. It was held that it was not proper to impose penalty in the said circumstances and

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the Tribunal must examine the documents and record to arrive at a finding that any attempt to evade tax made; **Shree Ram Panels's** case (Supra), wherein a Coordinate Bench of this Court had dismissed the appeal filed by the State of Punjab against the order of the Tribunal and had set aside the imposition of penalty on the ground that there was no violation of Section 51(4) of the PVAT Act with a view to make an attempt to evade tax as the driver was in possession of the goods receipt along with invoices and had produced the same as well; **M/S. Punjab Wool Syndicate's** case (Supra), wherein as per the supply order made by CRPF, goods by the assessee-Company were being transported. These goods were detained on the ground that the documents were not produced by the driver before the ICC. This Court had set aside the imposition of penalty on the ground that no attempt was made to evade tax as the driver of the vehicle was in possession of goods receipt along with the invoices. It was also held that merely on the ground that entries were not made before the ICC, penalty proceedings could not be initiated; and **M/s. Balaji Trading Company, Rewari's** case (Supra), wherein the assessee-Company was dealing with purchase orders from a Government of India Undertaking i.e. NAFED. The goods were detained. It was held that only on the basis of statement of the driver, penalty could not be imposed as the transaction was held to be bona fide. In the present case, the requisite invoice, GR along with inspection report and report from RITES were accompanying the consignment of the goods. Only on the basis of the statement alleged to be recorded by the driver that he had not reported about the consignment at the ICC under the instructions of the consignor, no conclusion could be drawn especially in the circumstance,

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when the transaction is shown to have taken place with DMW which is a department of Indian Railway and is a Government department. CST as applicable as per the invoice had been charged. Merely non-reporting about the consignment at the concerned ICC and not making declaration in the prescribed form did not lead to the conclusion that there was violation of Section 51 (4) of PVAT Act with a view to make an attempt to avoid the tax. It is not the case of the respondent that the invoice or GR were not genuine. The authorities below and the Tribunal did not examine the genuineness or otherwise of these invoices and goods receipt etc. and the Tribunal had merely gone by the alleged admission of the driver. In these circumstances, we are of the opinion that the impugned orders are not sustainable as the Tribunal was required to examine the entire material on record before concluding that there was any attempt to evade tax on the part of the dealer. In view of this discussion and further in view of ratio of law as laid down in the above cited authorities, we are of the opinion that the impugned orders as passed by the Tribunal are not sustainable. Accordingly, the appeal is allowed. The impugned orders passed by the Tribunal are set aside and it is held that no case for imposition of penalty has been made out against the appellant.

9. Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.03.2023
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No