HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

PB Vat Revision No. 3 of 2022 (O&M)
Date of decision: 13.09.2023

M/s. Sehgal Pharma ....Petitioner

V/s.

State of Punjab and another .....Respondents

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

Present: Mr. Naveen Bindal, Advocate with
Mr. Anurag Sharma, Advocate
for the petitioner.

Mr. Saurabh Kapoor, Addl.A.G., Punjab.

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Ritu Bahri, J.

1. **<u>CM-18638-CII-2022</u>**

For the reasons mentioned in the application, the same is allowed and the delay of 30 days in refiling the revision petition is condoned.

2. **<u>PB Vat Revision No. 3 of 2022</u>**

The petitioner is seeking quashing of order dated 30.04.2021 (Annexure P-8) passed by the Punjab VAT Tribunal in Revision No. 17 of 2015 and order dated 28.05.2015 (Annexure P-6) passed by respondent No. 2 vide which demand of Rs.10,26,405/- was created for the Assessment Year 2010-11.

3. The brief facts of the case are that the petitioner exported medicines out of India for the Assessment Year 2010-11 and claimed refund of input tax credit on account of purchase of the goods during the relevant period. The Assessing Officer-cum-Designated Officer, after considering all the

documents, framed the assessment for the relevant year vide assessment order dated 04.07.2013 (Annexure P-1) and allowed a refund of Rs.7,72,160/- which was granted to the petitioner.

4. The respondent No. 2 initiated revisionary proceedings against the petitioner and issued notice under Section 65(1) for revision of assessment order dated 18.12.2014 as the respondent No. 2 was not satisfied with the mode of goods exported. He issued another notice dated 14.05.2015. In response to the said notice, petitioner filed reply (Annexure P-2) stating that the goods were dispatched on order at the addresses advised by the foreign based buyers and the goods were sent outside India by using services of Indian Post. The sample postal receipts are enclosed as Annexure P-3 and the list showing party name, bill number, bill amount, date of bank realization certificate, total receipts and date of export are also annexed as Annexures P-4 and P-5.

5. Without considering the reply filed by the petitioner, the respondent passed revision order dated 28.05.2015 (Annexure P-6) and created demand of Rs.10,26,405/- as tax due and imposed penalty of Rs.20,52,810/- under Section 56 of the Act.

6. Feeling aggrieved of revision order dated 28.05.2015 (Annexure P-6) , the petitioner preferred application under Section 65(2) of the Act dated 20.07.2015 (Annexure P-7) before the Value Added Tax Tribunal Punjab, Chandigarh. Vide order dated 23.03.2021/30.04.2021 passed by the VAT Appellate Tribunal, Punjab (Annexure P-8), the matter was remanded back to the Assessing Authority to consider the matter regarding imposition of penalty and interest.

5. Learned counsel for the petitioner has aruged that as per observation made in the order dated 23.03.2021/30.04.2021 (Annexure P-8)

itself, a finding of fact has already been given that there was a mismatch in the import invoices and the postal receipts/couriers. He further stated that the petitioner had exported the goods to a company and the medicines were supplied to the consumers directly and the payment has been made directly made by the consumers to the account of the petitioner on the instructions given by the foreign based buyer. This evidence is already with the department and only on account of mismatch of buyers and consumers, the benefit of exemption from taxes is not being extended to the petitioner.

6. Keeping in view above facts, revision petition is disposed of. Order dated 23.03.2021 is set aside and the case is remitted back to the Assessing Officer so that the entire matter can be examined afresh especially keeping in view the postal receipts which showed that the material was sent by the petitioner to the consumers directly.

7. The petitioner is directed to submit all the original records with respect to the postal receipts and the payment made by the consumers in the petitioner's account directly, to the Assessing Officer.

(RITU BAHRI)
JUDGE

13.09.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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