IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9883-2011
Date of decision:- 06.10.2023

M/s Gopi Chand Krishan Kumar Bhatia .... Petitioner

vs.

State of Haryana and ors. ...Respondents

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

Present: None for the petitioner

Mr. Sharan Sethi, Addl.A.G, Haryana

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Ritu Bahri, J.

1. Challenge in this petition is for quashing penalty order dated 25.02.2008 (P-2), 18.02.2009 (P-3), 03.03.2010 (P-5) and 20.01.2010 (P-7).

2. As per petition, the petitioner is carrying on trading in at Delhi having TIN No. 67380101725 and the petitioner deals in Badam and Badam Giri. The Badam is mainly imported from outside India. The same is sent for job work i.e, the giri is extracted out of Badam and then this Girl is stored in cold storages, Subsequently this is sold. When the Badam is imported, on the import Additional Duty of Custom is levied. This duty is refunded when the importer pays the Sales Tax or Value Added Tax on the imported goods. The notification dated 14.09.2007 is attached as ANNEXURE P-1.

3. The petitioner sent his goods (Badam) imported from outside India for job work i.e. extracting Giris out of the Badam. After the extraction of Giri the goods were being sent from Delhi to Kundli for storing the same in cold storage.

The regular accountant was on leave and the junior staff instead of making a challan on letter head, sent the goods in Truck and handed over a blank letter head. The goods were checked in Haryana and were detained as no prescribed documents were accompanied the goods. The dealer appeared & produced purchase bill No. 1415393, copies of Inward and Outward challan and other documents explaining the facts. It was also stated that the goods were being sent for storage purposes, there is no sale involved, hence no involvement of tax is there. The entire procedure of import of goods and the refund of special excise duty on payment of tax was also explained. It was shown that there could be no occasion to keep the transaction out of books. The respondent No. 2 vide order dated 25.02.2008 imposed a penalty under Section 31(8) of Rs. 4,95,000/- and the advance tax of Rs. 2,06,250/- creating a total demand of Rs. 7,01,250 by wrongly recording that no documents of import of goods was produced. The purchase bill produced showed that goods were purchased from USA. Copy of the penalty order is attached as ANNEXURE P-2.

4. Aggrieved of the above mentioned order, the petitioner filed an appeal before Respondent No. 3. It was stated that entire facts alongwith complete record of import was produced before respondent No. 2 and further that there was no tax element involved, as there was no sale and goods were going for storage in cold storage of M/s Golden Almond India Pvt. Ltd. Kundli. Further it was explained that the goods were imported and Special Additional Duty was paid which was refundable to the dealer on showing that the sales Tax / Vat tax has been paid on these goods. The first appellate authority without dealing with the issues raised,

just reproduced the findings of penalty order and dismissed the appeal, vide order dated 18.02.2009 (Annexure P-3).

5. An appeal was also filed before Haryana Tax Tribunal at Chandigarh. Annexure P-4. The entire case was argued before the Tribunal showing that though the documents at the time of checking were not there but there was no attempt to evade the tax for the reason that no tax element vas involved as the goods were moving for storage purposes and no sale was there. Further, the goods were imported and the dealer would get refund of special additional duty on showing that the goods have suffered tax on their sale. Hence there was no occasion to keep the transaction out of books. No inquiry was conducted by the lower authority and penalty has been levied on imagination and surmises. The plea raised and evidence adduced by the dealer has not been dealt with by the lower authorities.

6. The Tribunal, vide order dated 03.03.2010 (P-5) dismissed the appeal and without dealing with any of the grounds of appeal and arguments raised. The Tribunal only reproduced passages of decision of Hon'ble the Supreme Court in ***State of Rajasthan Va. M/s D.P. Metals reported as (2001):18- PHT-441*** and dismiss the appeal.

7. In case of D.P. Mattel, Hon'ble the Apex Court was dealing with the issue of vires of Section 78 (5) of Rajasthan Sales Tax Act, 1994. It was only with regard to upholding of Vires that the said observations were made by the Apex Court. The Tribunal instead of deciding the issue regarding attempt to evade tax and whether penalty could be imposed and in the facts and circumstances of the case just relied upon the observation made in the case of **D.P. Metals.**

8. A review was also filed but the same was dismissed by stating that provisions of Section 31 of Haryana Value Added Tax Act, are similar to section

37 of Haryana General Sales Tax Act, which are further similar to Section 78 of Rajasthan Act. Hence there is no occasion to entertain the review. Copy of the review order dated 20.01.2011 is attached as Annexure P-7. Hence the present writ petition

9. In para No. 10 of the petition, reference has been made to Division Bench judgment of this Court in a case of ***M/s Anand Refrigeration Co. (P) Ltd, Jalandhar City vs. State of Punjab,*** passed in G.S.T.R. No. 17-2006 wherein a vehicle carrying a consignment of twenty deep freezers, belonging to the petitioner was intercepted and checked by the Enforcement Staff, Jalandhar. The documents produced by the driver were stated to be neither complete nor proper nor genuine. A show cause notice was issued to which the petitioner filed reply. However, a penalty was imposed under Section 14-B (7) of the Punjab General Sales Tax Act, 1948. The appeal filed by the petitioner was dismissed. On another appeal filed by the petitioner before the Tribunal, the Sales Tribunal reduced the penalty. However, this Court allowed the appeal of the appellant and held that penalty cannot be imposed simply for non-production of genuine documents at the time of checking until and unless there is specific findings of attempt to evade tax.

10. On notice of the petition, a written statement was filed by Excise and Taxation Officer (Enforcement), Sonepat on behalf of respondent Nos. 1 to 4 stating therein that during the course of roadside checking conducted by the respondent on 12.02.2008, a vehicle bearing No. DL-1LD-6046 loaded with 100 bags of Badam Giri (50 kg each) was intercepted and found carrying these goods without any documents. There were two blank letter pads of the firm M/s Gopi Chand Krishan Kumar Bhatia, Tilak Nagar, Delhi (Annexure R1, R2) with the driver-cum-person incharge of the goods, given by the petitioner dealer and a loose

slip no. 03, dated 12.2.2008 (Annexure R3) in the name of Sh. Gopi Chand Ji showing Net-100=50=1 vehicle no. DL-1LD- 6046. These blank papers which were given by the driver at the time of detection were got signed by him, alongwith his statement separately recorded. The copy of the statement of driver is attached as Annexure R4.

11. The driver has stated in his statement that there is no document with him of this transaction. He has only two blank letter pads of Delhi firm. As the consignment of 100 bags of Badam Girls were not accompanied with any genuine and proper documents, the Checking Officer issued a show cause notice/detection report vide no. 0000031, Book No. 6663, on dated 12.2.2008. In response to this notice, Sh. Y. S. Rana, C.A. appeared before the Checking Officer on 19.2.2008, who submitted a written reply in detail before the Checking Officer. The Checking Officer was not satisfied with the reply produced by C.A. and adjourned the case for 25.2.2008. Sh. Y.S. Rana, the authorized signatory appeared before the Checking officer 23.2.2008 and requested him that the case may be decided today. After giving full opportunity to him, the authority could not be satisfied with the documents and arguments put before him, therefore, a penalty of Rs.4,95,000/- was imposed under Section 31(8) of the Act and the advance Tax calculated @ 12.50% i.e. Rs. 2,06,205/- was also charged. The Checking Officer concluded that the petitioner's emphasis is that he is an exclusive importer of Badam and due to lack of knowledge of the junior staff, the documents of the goods were not prepared and sent with the goods transported, was not admitted treating it to be a concocted story.

12. Heard.

13. Reference at this stage can be made to invoice No. 1415393 (P-8) issued by Blue Diamond Growers, Sacramento, California, U.S.A and product description is mentioned as BD 50LB Bag Nonp Inshell amounting to $ 81,000.00.

14. The department while passing the impugned order has not taken in to consideration the above document on the sole ground that it was produced after 08 days and presumption has been made that it was a forged document. In ***M/s Anand Refrigeration Co. (P) Ltd's case (supra),*** the Division Bench has considered Section 14-B (7) of PGST Act, 1948 and held that the combined reading of these provisions would reveal that the appropriate authority under the Act, is under legal obligation to conduct an enquiry after serving a notice to the consignor or consignee and give him an opportunity of being heard. If after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release the goods and the vehicle. Reference has been made to Full Bench judgment of this Court in a case of ***Mool Chand Chuni Lal vs. Shri Manmohan Singh, Assistant Excise and Taxation Officer Octroi Incharge, Shambhu Barrier, District Patiala and another,*** 1977 (4) STC 238 (FB) (P&H). The operative part of the judgment reads as under:-

> *"10. An identical question arose before a Full Bench of this Court in* ***Mool Chand Chuni Lal's case (supra)****, Having interpreted the relevant provisions and relying upon the judgment of this court in case Dunlop India Limited v. State of Punjab [1972] 30 S.T.C. 597, it was held that the amended section 14-B (7) of the Act for levy of penalty is not based on any assumption that the goods were transported after sale within the State. Its basis is the attempt to evade tax and it prescribes a condition*

precedent for the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. The goods which are to be detained are also specified in section 14-B (6) as goods meant for trade and not covered by proper and genuine documents. Sequelly, in Prakash Roadlines (P) Ltd's case (supra), it was observed that "mere failure to produce documents on demand by the assessee not by itself sufficient to sustain levy of penalty"

11. It is not a matter of dispute that the assessee submitted sales tax return on 9.8.1996 Le., a week earlier to the detection of the goods, which Includes the sales of the consignment in question and had deposited the central sales tax at the rate of 4% coupled with the fact that the import permit In Form 40 dated 7.8.1996 was accompanying the consignment, as prescribed under West Bengal Sales Tax duly signed by the purchasing company and by the Sales Tax Authority of West Bengal Indicating number of deep freezers and other particulars of the consignment and also the number of the goods receipt. The Presiding Officer, Sales Tax Tribunal having considered these facts found weight in the argument raised on behalf of the assessee, particularly the fact that the payments were through the banks and the transaction was pre-authenticated by the Sales Tax Department of West Bengal and Tribunal reduced the penalty levied (Rs.1,26,000/-) to 15% only. The sales tax is to be levied at the rate of 4% or 12% is entirely a different matter to be determined by the authorities at the appropriate time.

12. Be that as it may, the fact remains is that the assessee submitted the sales tax return, much prior to the detection of the present consignment and paid the tax through bank accordingly, describing all the relevant details. Not only that, the transaction was pre-authenticated, but it was accompanying the import permit in Form 40 dated 7.8.1996 as prescribed under West Bengal Sales Tax duly signed by the purchasing company and by the Sales Tax Authority of West Bengal and the payments were made through the banks. Therefore, once the assessee had filed the returns of the full transaction, indicating therein, all the necessary details, then, in that eventuality. It cannot possibly be saith that there was any attempt on the part of the assessee to avoid/evade the tax.

13. As is evident from the record that in the wake of demand, the driver of the vehicle submitted all the documents to the Sales Tax Authority. But the authorities below ignored the same only on the ground that the bill was not issued from the regular bill book and thus the consignment of 20 deep freezers was not covered by the proper and genuine documents and imposed the penalty of Rs.1,26,000/- under section 14-8 (7) of the Act. It is no where stated that the documents submitted on behalf of assessee were forged or not genuine. In State of Kerala v. M.M.Mathew and another [1978] 42 S.T.C. 348, Hon'ble Supreme Court observed that "strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof." Assuming for the sake of argument (though not admitted), if the consignor or consignee failed to produce the genuine documents. then penalty cannot be imposed under section 14-B (7) of the Act, without recording a specific finding that there has been an attempt to avoid or evade the tax, which is totally lacking in the instant case. In the absence of the same, which is a condition precedent, a penalty clause cannot possibly be invoked, under the present set of circumstances.

14. There is another aspect of the matter, which can be viewed from a different angle. As indicated above, section 14-8 (7) of the Act envisaged different situations for levying penalty. That means, there is a provision for levying a penalty in this respect, but penalty should not ordinarily be imposed only on the ground that such provision exists in statue. It should only be imposed if the party either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not be Imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances. Hon'ble Apex Court in **Hindustan Steel Ltd. v. The State of Orissa [1970] 25 S.T.C.211** *has ruled that "even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.*

15. Thus, seen from any angle, we are of the considered opinion that in the absence of any cogent material and specific finding that there has been an attempt to avoid or evade the tax due or likely to be due, no penalty can be imposed on the assessee as contemplated under section 14-8 (7) of the Act. The contrary argument on behalf of the Department "stricto-sensu" deserves to be and are hereby repelled as the aforesaid judgments are the complete answer to the problem in hand."

15. The ratio of the above mentioned judgment can be applied to the facts of the present case because Section 31 (8) of HVAT Act is *para materia* the same of 14 (b) (7) of PVAT Act. Section 41 (b) (7) of PVAT Act and Section 31 (8) of HVAT Act reads as under:-

14-B-Establishment of check posts or information collection centres and inspection of goods in transit –

1.	*xxx*	*xxx*	*xxx*
2.	*xxx*	*xxx*	*xxx*
3.	*xxx*	*xxx*	*xxx*
4.	*xxx*	*xxx*	*xxx*
5.	*xxx*	*xxx*	*xxx*
6.	*xxx*	*xxx*	*xxx*

7. The officer detaining the goods under sub-section 6, shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within a period of seventy two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alongwith the concerned records to such officer, as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter.

(ii) The officer authorised by the State Government shall, before conducting the enquiry, serve a notice on the consignor or the consignee of the goods detained under clause (1) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the [tax due or likely to be due under this Act he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings

(iii) The officer referred to in clause (il), before conducting the enquiry, shall serve a notice on the consignee of the goods, detained under clause (ii) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer is satisfied that the documents as required under sub-section (2) and sub-section (4), were not furnished at the information collection centre or the check post, as the case may be, with a view to

attempt to avoid or evade the tax due or likely to be due under the Act, he shall by order for reasons to be recorded in writing, impose on the consignor or the consignee of the goods, penalty equal to fifty per cent of the value of the goods involved. In case, he finds otherwise, he shall order release of the goods for sufficient reasons to be recorded in writing. He may, however, notwithstanding anything contained in clause (ii) of sub-section (6), order release of the goods and vehicle on furnishing a security by the consignor or the consignee in the form of cash or bank guarantee or crossed bank draft for an amount equal to the amount of penalty imposeable and shall decide the matter within a period of fourteen days from the commencement of the enquiry proceedings."

31 (8) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods carrier. If, after the inquiry including an inquiry into the nature of the transaction which occasioned the movement of goods, such officer finds that there has been an attempt to evade the tax, he shall, by order, impose on the owner of the goods and In case the owner is not forthcoming or his identity is not disclosed by the person incharge of the goods or the driver or person incharge of the goods carrier, in which the goods are being carried, on the person incharge of the goods or the goods carrier or the driver, deeming such person to be the owner of the goods, a penalty computed by multiplying the value of the goods with three times the rate of tax applicable on their sale subject to a maximum of thirty percent of the value of the goods, and direct him to deposit, in addition to the penalty, advance tax computed by multiplying the value of the goods with the rate of tax applicable on their sale which shall be adjustable with the liability to tax incurred on the purchase or sale of such goods or the sale of goods manufactured therefrom, as the case may be, and in case it finds otherwise, it shall order the release of the goods:

Provided that where the offence relates to only an attempt to evade tax by underpricing the goods, the penalty shall be computed by multiplying the difference between their market price and the value shown in the documents accompanying their movement with three times the rate of tax applicable on their sale:

Provided further that no penalty shall be imposed and no advance tax shall be required to be deposited unless the owner of the goods or his representative or person incharge of the goods or the goods carrier or the driver, as the case may be, has been given a reasonable opportunity of being heard:

Provided further that if the penalty imposed under this sub-section is set aside in any proceeding under this Act or by the court, the amount of advance tax and penalty both shall be refunded to the person who paid the same."

16. In the present case, the only ground for imposing penalty was given that the document (P-8) was given by the petitioner after 08 days. However, giving the documents after 08 days would not make it a forged document. Further the invoice has been issued by a Company from U.S.A. The finding that this invoice is

forged and fabricated has been given without verifying the contents of the invoice (P-8). This finding cannot be given without enquiry and there was no attempt of evading tax. Moreover, the petitioner was importing the badam for which he has paid the additional duty of custom and this duty is also refunded.

17. In view of the above discussion, the present petition is allowed and order dated 25.02.2008 (P-2), 18.02.2009 (P-3), 03.03.2010 (P-5) and 20.01.2010 (P-7) are set aside.

18. Since the main case has been allowed, the pending miscellaneous applications, if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

06.10.2023
G Arora

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