IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

PVR No.9 of 2011 (O&M)
Date of decision: 16.02.2023

State of Punjab and another

…Petitioners

Vs.

M/s K.K.K. Mills

…Respondent

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

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

Mr. Sandeep Goyal, Advocate,
Mr. Rishab Singla, Advocate,
And Ms. Vidisha Swarup, Advocate,
for the respondent.
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Ritu Bahri, J. (oral)

The instant VAT revision, under Section 68 (1) of the Punjab Value Added Tax Act, 2005, is against the order dated 03.12.2010 (Annexure P-3) passed by the Value Added Tax Tribunal, Punjab.

Vide assessment order dated 15.05.2007 (Annexure P-1), the original assessment of the respondent-assessee, for the assessment year 2004-2005, was framed by the Assessing Authority, Ludhiana under Section 9 (2) of the Central Sales Tax Act, 1956 read with Section 11 of the Punjab General Sales Tax Act, 1948 (for short 'PGST Act'), whereby demand was shown as 'NIL'. Subsequently, while exercising the suo-moto powers under Section 21 (1) of the PGST Act read with Section 9 (2) of the CAST Act, the Assistant Excise & Taxation Commissioner-cum-Revisional Authority, Ludhiana-III, initiated the revisional proceedings by holding that in the aforesaid assessment order dated 15.05.2007 (Annexure P-1), inter-state sales amounting to Rs.3,39,64,182/- were determined @ 2% for the goods comprising of yarn sold against 'D' Forms to the Government Departments, whereas the concessional rate of CST @ 2% for the yarn was applicable under notification dated 13.07.2001, subject to submission of declaration in Form 'C' as specified under the Central Sales Tax (Registration & Turn Over) Rules, 1957 at the time of assessment and therefore, when the said sales of yarn were not subject to/against the declaration in Form 'C', but against Form 'D', CST leviable thereon, was @ 4%. Upon affording appropriate opportunities, respondent-assessee submitted its written submission-reply on 06.11.2009 and contested the said revisional proceedings on the grounds that the original assessment order was barred by limitation. As per notification dated 13.07.2001, the sales made to the Government Departments were also included and reduced rate of tax @ 2% was only applicable on the yarn.

After considering the reply, the Revisional Authority rejected the plea of the respondent by holding that it (respondent) had not raised any objection regarding limitation at the time of framing of original assessment and passing of order dated 15.05.2007 (Annexure P-1). It was further held that the notification dated 13.07.2001 applied only to the sales of yarn against 'C' Form so as to make it exigible to reduced rate of CST @ 2% and not in any other manner. Nothing could be added or deleted from the plain wording of the said notification. The Revisional Authority framed the assessment under Section 21 of the PGST Act on the basis of CST @ 4% in respect of the inter-state sales made by the respondent against 'D' Forms instead of 2% as claimed by the respondent. Vide order dated 23.11.2009 (Annexure P-2), a demand of Rs.6,69,450/- was raised against the respondent.

Feeling aggrieved, the respondent preferred a revision under Section 9 (2) of the CST Act, 1956 read with Section 21 (3) of the PGST Act, 1948 before the Value Added Tax Tribunal, Punjab. Vide order dated 03.12.2010 (Annexure P-3), the Tribunal accepted the revision filed by the respondent-assessee and set aside the order dated 23.11.2009 (Annexure P-2) passed by the Revisional Authority. Hence, the present revision.

The Tribunal, in the present case, has interpreted notification No.S.O.33/CA-74/56/S.8/2001 dated 13.07.2001, and held that as per this notification, any sale of yarn made by any dealer in the State of Punjab, including waste thereof and fibre including waste thereof, in the course of inter-state trade or commerce to any dealer having his place of business outside the State of Punjab, shall be calculated at the rate of 2% of his turnover, subject to the production of the declaration in Form 'C', specified under the Central Sales Tax (Registration and Turnover) Rules, 1957. It also includes the sales made by a manufacturer to a Government dealer during the course of inter-state trade and if, the Government dealer produces 'D' Form, the benefit of calculation of Central Sales Tax at the rate of 2% cannot be denied on the ground that in the notification, only declaration in Form 'C' has been referred for declaring the above said inter-State sales.

On 20.11.2012, when this petition was admitted, following substantial question of law was framed:-

> "Whether in the facts and circumstances of the case, the respondents were entitled to avail the reduced CSA @ 2% on the interstate sales of yarn, against submission of 'D' Forms to the Government Departments, by taking recourse of Notification dated 13.07.2001, in which the said concession was available only, if the Declaration in Form 'C' were submitted as specified in the Central Sales Tax) Registration & Turn Over) Rules, 1957 at the time of assessment."

Learned State counsel has vehemently argued that once, it is specifically stated in the notification that this benefit of calculation of 2% of tax is to be given on the basis of production of 'C' Form, the respondent cannot claim the benefit of above said notification by producing declaration of Form 'D'. He has further argued that the Tribunal has referred to the judgment passed in ***State of Punjab vs. M/s Shreyans Industries Ltd.***, VATAP No.74 of 2010 (decided on 02.02.2011) and the ratio of that judgment could not be applied in the present case, as the facts therein were different altogether.

The aforesaid judgment has been annexed as Annexure R-1 and a perusal thereof shows that the assessee was manufacturer of papers and had made sales to the Government department against Form 'D' charging 1% CST. The Assessing Authority held that the assessee was liable to pay 4% CST. Further, the Cabinet Sub Committee had taken a decision for reduction in the rate of tax on paper manufacturing in the State of Punjab and inter-state sales from 4% to 1% w.e.f. 01.04.1995 and while taking that decision, there was no stipulation that this benefit would be extended against production of 'C' or 'D' Forms. Words 'subject to production of Form C' were added in the notification dated 31.03.1995, but the Government departments had been calculating inter-state CST at the rate of 1% before this notification. When the Cabinet had already taken a decision to reduce CST from 4% to 1%, in that eventuality, it would be immaterial, if a dealer produces 'D' Form or 'C' Form. Finally, the appeal was dismissed by observing that where there were inter-state sales and the Government had taken a conscious decision to reduce CST from 4% to 1% w.e.f. 01.04.1995, the benefit could not be denied for inter-state sales made to the Government departments for non production of 'C' Form. The ratio of this judgment is directly applicable to the facts of the present case.

Learned counsel for the respondent has referred to the representation (Annexure R-3) made by the Yarn Dealers Association, Amritsar, to reduce the sales tax on yarn from 4% to 2%; representation (Annexure R-4) of Punjab Waste Dealer's Association, Regd., Ludhiana to waive off 4% tax on all kinds of waste viz. Acrylic, Synthetic, Staple and Hosiery waste; Representation (Annexure R-5) of Federation of Yarn Trade & Industries, Ludhiana, regarding reduction of rate of sales tax; Representation (Annexure R-6) of the Federation of Yard Trade & Industries and Appollo Fibres Limited, Hoshiarpur and representation (Annexure R-7) made by the Yarn Dealers Association to reduce the sales tax on yarn from 4% to 2%. In all these representations, a prayer has been made to grant the above said benefit on production of Forms 'C' and 'D'. Finally, notification dated 11.09.2000 (Annexure R-1) was issued, as per which, the Central Government had notified charging of 2% tax on interstate sales, subject to the condition that production of Form 'C' and 'D' shall be mandatory. In the official gazette, this notification was published at Sr. No.93, which reads as under:-

> "S. No.93 Sub: INTER-STATE SALES OF YARN AND FIBRE INCLUDING WASTE THEREOF-RATE OF TAX (PUNJAB)
>
> Whereas the Governor of Punjab is satisfied that it is necessary so to do in the public interest so to do.
>
> Now, therefore, in exercise of the powers conferred by **sub-section (5) of section 8** of the Central Sales Tax Act, 1956 (Central Act No.74 of 1956), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to direct that the tax payable under sub-section (2) of section 8 of the said Act, by any dealer having his place of business in the State of Punjab, in respect of the sales made by him of yarn of all types including waste thereof and fibre including waste thereof in the course of inter-State trade or commerce, to any dealer having his place of business

> outside the State of Punjab, shall be calculated at the rate of two percent of his turnover or any part thereof relates to such sales subject to the production of the declaration in form "C" specified under the Central Sales Tax (Registration and Turnover) Rules, 1957, at the time of assessment.
>
> This notification shall come into force with immediate effect."

A perusal of the above two notifications shows that intention of the Legislator was to provide benefit of 2% tax on the inter-state sales to all the dealers outside State of Punjab and this included the Government dealers as well. However, at the time of issuing final notification, words "**declaration in Form D**" could not be mentioned. This omission in itself cannot alter the meaning of the notification as a whole, whereby it is clearly mentioned that benefit of this notification is to be given to **any dealier having his place of business outside the State of Punjab**. Any dealer would include private as well as Government dealer. Only declarations in Form 'C' and Form 'D' were to be provided by the private and Government dealers respectively. Guidelines for presenting Form 'C' and 'D' by the private as well as Government dealers have also been laid down separately. This is only a procedural declaration and omission of mentioning the words **Form 'D'** cannot be made a ground to deny the benefit of this notification to the Government dealers outside the State of Punjab. Ratio of the judgment passed in ***Shreyans Industries's*** case (supra) has been correctly applied by the Tribunal.

The present appeal was admitted way back in the year 2012. Learned counsel for the petitioner-State has not been able to cite any instance, where even after 2012, the State has not extended this benefit to any dealer outside State of Punjab being a Government department.

In view of the above discussion, no ground is made out to interfere in the impugned order passed by the Tribunal. Resultantly, finding no merit, present petition is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

16.02.2023
ajp

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