IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 **VATAP-1-2010 (O&M)**
Date of decision:- 18.01.2023

State of Punjab and another
.... Appellants

Vs

M/s Birla Corporation Ltd.
...Respondent

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

Present: Mr. Saurabh Kapoor, Addl. A.G. Punjab
for the appellants.

Ms. Sandeep Goyal, Advocate with
Mr. Nazuk Singhal, Advocate
Ms. Vidisha Swarup, Advocate
Ms. Aakriti, Advocate for the respondent.

***

Ritu Bahri, J. (Oral)

Appellant-State has come up in appeal against the order dated 31.08.2009 (Annexure A-3), passed by the Chairman, Value Added Tax, Tribunal Punjab, Chandigarh, whereby appeal filed by the assessee against the order dated 30.01.2009 of DETC (A) Faridkot, Division, H.Q, at Bathinda has been allowed.

A perusal of this order (Annexure A-3) shows that the tribunal has taken into account the cost paid by the assessee for purchasing the cement bags and the cost has been assessed after considering that the freight element 39.03 per bag is of 50 kg. Cost of manufacturing of cement is Rs.61.60 per bag and excise duty 20.28 per bag including education cess of 2%. The costs calculated for each bag is Rs.120.91 per bag and it is a case of stock transferred from Rajasthan to Punjab. The assessee was liable to pay the tax after making the same @ 12.5% under the VAT Act which he has paid and the sale price is 139.06 per bag. The price of a bag @ Rs. 139.06, the assessee has paid VAT @ 12.5%. The tribunal has set aside the order of the Deputy Excise and Taxation Commissioner (Appeals), dated 30.01.2009 whereby enhancement was made in the sale price by adding the handling charges label freight etc. of an amount of Rs. 91,54,424+8,01,44,254 and this amount was assessed as suppressed sales.

The tribunal has reversed this finding by observing that once the sales price comes to Rs.139.06 which has not been accepted by the Assessing Officer and proceeded to add handling charges, label freight charges to this cost to make out the total sale value.

This aspect has been examined rightly by the tribunal and has held that handling charges, label freight charges cannot be made part of the sale price to assess the VAT and this has been rightly done as sales in the present case had been of 4577212 bags for the sale price of Rs.63,65,09,830/- and 12.5% VAT had already been paid.

Learned counsel for the appellant-State of Punjab has not been able to cite any judgement to show that on the sale price assessed handling charges and label freight can be added to claim VAT for enhancing the value of sales.

The finding given by the Tribunal is not perverse and no interference is required.

Dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

18.01.2023
pooja saini

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