Neutral Citation No. 2023:PHHC:124036-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

262 VATAP-41-2010 (O&M)
Date of decision:-14.09.2023

M/S AKASH COTTON FACTORY MANSA

.... Appellant

Vs

STATE OF PUNJAB AND ORS.

.... Respondents

Neutral Citation No. 2023:PHHC:124038-DB

262(2) VATAP-42-2010 (O&M)

M/S HEM RAJ SOHAN LAL, TALWANDI ROAD MANSA

.... Appellant

Vs

STATE OF PUNJAB AND ORS.

...Respondents

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

Present: Mr. Shantanu Bansal, Advocate for the appellant(s).

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

Ritu Bahri, J.

This common order shall dispose of abovementioned two appeals as the issues involved in these appeals are identical in nature. However, for the sake of brevity, the facts are being extracted from VATAP-41-2010.

The appellant has come up in appeal against the order dated 20.11.2009 passed by the Value Added Tax Tribunal, Punjab, Chandigarh, Annexure A-4.

The appellant is a dealer engaged in the business of crushing of oil seeds. As per the assessment order under Section 29 of the Punjab Value Added Tax, 2005, (for short 'Act, 2005') Annexure A-1, the business premises of the dealer was inspected by Mobile Wing, Bathinda and thereafter, notice under Section 29 under the Act, 2005, was issued. The dealer failed to appear and produce his account books in support of his claim of consignment sales. The officers proceeded to decide the case ex-parte on merits as per the record available with them. As per the records available, the officers rejected the sale made to the dealers outside the State of Punjab amounting to Rs.12,09,36,486/- on the ground that they were considered as local sales within the State of Punjab as the dealer had not shown any dispatch outside the State. With respect to the goods sent to M/s Begraj Ashok Kumar, Silligudi and M/s Madan Gopal and company, they had crossed the ICC and the dealer had produced the information. He had also shown dispatches of khal sarson amounting to Rs.68,29,136/- to M/s Keshav Trading Company, Delhi. After doing necessary verification, it found that the firm existing at Delhi and the dealer had accounted for this transaction at Delhi. He had produced

'F' form and the same were accepted. However, the authorities rejected the sales which were not proven but the sales which were shown to be interstate sales worth Rs.7,51,355/- and as per the ICC data he has made interstate sales of Bardana worth Rs.3,66,000/- and they were shown as local sales. The assessment was made and Rs.48,12,401/- tax was imposed as being evaded and he was held liable for penal action under Section 56 of the Act, 2005 and simultaneously challan was issued for Rs.64,648/- under Central Sales Tax Act, 1956. This order was passed on 15.05.2007, Annexure A-1 and appeal was partly allowed by the Commissioner (Appeals), Faridkot Division, H.Q., at Bathinda, vide order dated 28.12.2007 (Annexure A-3) and demand was reduced to Rs.4,28,052/- and this was reduced on account of non-production of 'F' forms and further holding that no penal action was required to be taken against assessee. Against this order, State of Punjab went in appeal before the Tribunal whereby the appeal was accepted and the order passed by the designated officer 16.01.2007 was restored. Against this order the appellant has come up in appeal.

A perusal of the order dated 28.12.2007 (Annexure A-3) shows that no opportunity of cross-examination was given to the dealer and it has also been observed that payments had been received by the appellant either through cheques or drafts and the transactions were duly entered in the account books reflected in the returns and VAT-20.

In the present case, opportunity of hearing could only be granted to the appellant had he appeared before the assessing authority. As per order Annexure A-2, dated 28.12.2007, number of opportunities had been given to the appellant, however, he did not put in appearance nor produced any ‘F’ form and the authority proceeded against ex-parte and had passed the order on the basis of evidence with them and the verification carried out at their own level from Delhi. When it was found that the dealer had accounted for these transactions at Delhi, they extended the benefit of ‘F’ form to the appellant. The appellant authority has not referred to the provisions of Section 3(a) of the Central Sales Tax Act, Rules 1957 as reflected at Page 43 of the paper book where the assessee apart from producing form ‘F’ is required to maintain all the conditions to claim the benefit of exemption to claim these sales on consignment basis. The appellant has not assisted in giving complete addresses of the Company namely, Shakti Trading Company and Ghansi Ram & Co. and on the basis of F forms they could not get benefit under Section 3(a) of the Central Sales Tax Act Rules 1957. The appeal has been rightly accepted by the tribunal.

No substantial question of law arises for consideration in the present appeal as the appellant-assesee never chose to appear before the Excise and Taxation Officer-cum-Designated Officer, Mansa and this finding of fact recorded by the authorities, after giving verification is not a question of law which needs to be examined now. Since the appellant had not appeared and lead any evidence to show that his sales were interstate or within the State, the order passed by the Tribunal does not require any interference as no substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.09.2023
pooja saini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No