

VATAP No.98 of 2010 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

VATAP No.98 of 2010 (O&M)

Date of decision: 13.03.2023

M/s Raj Tube Co.

...Appellant

Vs.

State of Punjab and another

...Respondents

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

Present: Mr. Sandeep Goyal, Advocate,
for the appellant.

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

Ritu Bahri, J. (oral)

The instant appeal, under Section 68 (2) of the Punjab Value Added Tax Act, 2005, is against the order dated 30.08.2010 (Annexure A-8) passed by the Value Added Tax Tribunal, Punjab.

The appellant is a dealer duly registered under the provisions of the Punjab Value Added Tax Act, 2005 and the Central Sales Tax Act, having its place of business at Vishavkarma Nagar, Mandi Gobindgarh. The appellant being engaged in the business of resale of iron and steel goods, had sold iron pipes to M/s Biksons Engineering Works of Ahmednagar (Maharashtra). The purchasing dealer was duly registered under the State and Central Sales Tax Law. The goods were covered by Invoice No.407 dated 26.02.2009 amounting to Rs.4,06,504/- + CST @ 4% (Rs.16,260/-) (Annexure A-1). Those goods were also covered by G.R. No.465 dated 26.02.2009 (Annexure A-2) and the same were loaded in vehicle No. PB-

VATAP No.98 of 2010 (O&M)

Ahmed Nagar, the ETO, Mobile Wing, Patiala, detained the same under Section 51 (6) (a) of the Punjab VAT Act, 2005 on the ground that the driver of the vehicle had stated that he had loaded the entire goods from the business premises of M/s K.S. Steel Tubes, Amloh Road, Mandi Gobindgarh. The goods and the vehicle were got released by the appellant on furnishing of bank guarantees. A show cause notice (Annexure A-3) was issued to the appellant on 26.02.2009. In response to the notice, the appellant appeared before the AETC through its counsel and produced all relevant documents. The appellant also submitted written submissions on 06.03.2009 (Annexure A-4). Finally, vide order dated 06.03.2009 (Annexure A-5) passed by the AETC, a penalty of Rs.1,21,951/- was imposed upon the appellant under Section 51 (7) (b) of the Punjab VAT Act on the ground that there was *mens rea* to evade tax in the present case as the goods meant for trade were being transported by the dealer without proper and genuine documents with an intention to evade tax. Against the said order, appellant filed an appeal before the First Appellate Authority i.e. Deputy Excise and Taxation Commissioner (Appeals), Patiala, which was dismissed vide order dated 18.12.2009 (Annexure A-6). Even the second appeal filed by the appellant before the Punjab VAT Tribunal was dismissed vide order dated 30.08.2010 (Annexure A-8). Hence, the present appeal.

Learned counsel for the appellant has vehemently argued that the respondent-department has wrongly rejected the bills produced by the appellant on the ground that the goods were loaded from the premises of M/s K.S. Steel Tubes. However, no steps were taken against M/s K.S. Steel Tubes, who as per department, was the true owner of those goods. The driver of the vehicle had not crossed the ICC of Punjab State and was still in

VATAP No.98 of 2010 (O&M)

and A-2) produced by the driver were the only documents, which were required to be produced before leaving the State of Punjab. The oral statement given by the driver that the goods were loaded from the premises of M/s K.S. Steel Tubes cannot be made a ground to impose penalty. He has further argued that the appellant was the owner of the goods. The appellant had got the vehicle, along with the goods, released after furnishing adequate bank guarantee before the competent authority. Once the goods were released to the appellant and no action was taken against M/s K.S. Steel Tubes, the appellant has to be treated as owner of the goods and only on the basis of oral statement given by the driver, M/s K.S. Steel Tubes cannot be taken to be the owner.

Learned counsel for the appellant has referred to the judgment passed in **Krish Pack Industries vs. State of Punjab**, (2006) 28 PHT 27 (P&H), whereby this Court, while considering the case of imposition of penalty under Section 14B (7) (iii) of the Punjab General Sales Tax Act, 1948, has held that penalty cannot be imposed merely on the basis of admission of the driver. Before levying penalty, the Tribunal has to examine the documents and record a finding that any attempt to evade the tax was made out. Finally, the case was remanded to the Tribunal for passing a fresh order.

On the other hand, learned State counsel has argued that the driver of the vehicle had made a statement that the goods were loaded from the premises of M/s K.S. Steel Tubes, Mandi and when the ETO went to the premises of M/s K.S. Steel, then Manoj Sehgal, Manager of that firm, on the letter head of M/s K.S. Steel Tubes, had admitted that the goods had been loaded from that place. It was also pointed out that the driver of the vehicle

VATAP No.98 of 2010 (O&M)

be destroyed after the vehicle had left the limits of Punjab and transaction would have been gone unaccounted. The invoice, which the driver was carrying, could not be called a genuine document at all and therefore, the designated officer had rightly imposed penalty under Section 51 (7) (b) of the Punjab VAT Act. Learned State counsel has further argued that apart from the statement given by the driver, statement of Manoj Sehgal, Manager of M/s K.S. Steel, leads to only one conclusion that the computerized invoice was used by the petitioner to show that inter-state sale was being made. The vehicle was intercepted on 26.02.2009 and thereafter, the goods were leased on 27.02.2009 by furnishing the bank guarantee. The relevant documents along with written submissions were shown to the AETC on 06.03.2009. From 26.02.2009 till 06.03.2009, the appellant had enough time to prepare the computerized invoice and account book. Had the invoice been there in the custody of the appellant, the same could have been produced at the time of furnishing the bank guarantee on 26.02.2009 itself. This time was taken by the appellant to produce the invoice, which was computerized. All this goes to show that the documents were prepared after the goods were seized.

After hearing learned counsel for the parties and going through the contents of the appeal, it transpires that the department had committed a mistake by not involving M/s K.S. Steel Tubes Ltd. regarding transaction of goods from its premises without invoice. At the time of detention of vehicle and goods, the driver had produced the computerized invoice, which could have been destroyed after the vehicle had left the limits of Punjab and this fact has gone unaccounted. This invoice was not held to be genuine. More so, after about one week, the documents were produced before the

VATAP No.98 of 2010 (O&M)

appellant firm from various parties and *kanda parchis*. No such document was produced before the competent authority when the goods were released after accepting the bank guarantee. Once the appellant was taking the responsibility of getting the goods released, it was its own duty/responsibility to immediately produce the correct invoice. In this case, proper invoice had not been produced, rather it was a computerized invoice, which was produced after a gap of almost 10/20 days. Hence, the penalty has been rightly imposed upon the appellant, as the computerized invoice could have been easily destroyed. In **Krish Pack Industries'** case (supra), the Appellate Authority as well as the Tribunal did not consider the explanation of the petitioner that there was no attempt to evade the tax and the matter was remanded back to pass a fresh order after examining the documents available on record.

In the facts of the present case, the driver had produced the invoice as well as G.R. The invoice was computerized one. The fact that the goods were loaded from the premises of M/s K.S. Steel Tubes was also substantiated by the statement of Manoj Sehgal, Manager of that firm. Except that no other document was produced by the appellant, which has not been examined by the respondents. Keeping in view the statement given by the driver and the manager (Manoj Sehgal), penalty has been rightly imposed by the competent authority, as the appellant did not produce any invoice/document immediately after the goods were seized on 26.02.2009. The appellant took some time to produce the computerized invoice before the authorities.

In view of the above discussion, this Court is of the view that the impugned order has rightly been passed by the Tribunal and no illegality,

VATAP No.98 of 2010 (O&M)

much less perversity, has been found therein. No substantial question of law arises for consideration.

Accordingly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.03.2023
ajp

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