**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**VATAP No.11 of 2010 (O&M)**
**Date of decision: 18.04.2023**

**M/s ITC Ltd. (Food Division)**

**.....Appellant**

**Versus**

**State of Punjab and another**

**.....Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE AMARJOT BHATTI**

Present: Mr. Aakriti Gupta, Advocate,
for Mr. Rishabh Kapoor, Advocate,
for the appellant.

Mr. Alankar Narula, AAG, Punjab.

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**Ritu Bahri, J.**

The instant appeal, under Section 68 of the Punjab Value Added Tax Act, 2005, has been filed against the order dated 03.11.2009 (Annexure A-8) passed by the Value Added Tax Tribunal, Punjab (for short 'The Tribunal) in Appeal (VAT) No.357 of 2009, whereby appeal filed by the present appellant against the order dated 28.11.2008 passed by the DETC-cum-Joint Director (Inv.), Patiala has been dismissed.

The appellant-company is registered under the VAT Act in the State of Himachal Pradesh holding CST No.SOL/CST 7976 (Annexure A-1) This company is also registered under the Punjab VAT Act, 2005 holding TIN No.03881144363. On 06.03.2006, the goods were transported from Pondicherry in vehicle No.HP-21-A-4595. The said vehicle reached at ICC on 06.03.2006. The driver of the vehicle produced the following documents:-

(1) Delivery Challan No.STKTRF/03/01 dated 02.03.2006 from I.T.C. Loods Foods Division, Pondichery for

Rs.3,28,352/- in favour of M/s Cremica Agro Foods Ltd., A/C I.T.C. Ltd. Foods Division, Una.

(2) GR No.040831 dated 02.03.2006 of M/s CLS Express from Pondicherry to Una (HP).

The detaining officer, after scrutiny of the documents, found that in the delivery challan the consignee is of Una (HP), but TIN No. 03881144363, as mentioned in the challan, is of Punjab. Therefore, the goods were detained under Section 51(6) of the Punjab VAT Act and a show cause notice was issued by the detaining officer to the owner of the goods through the driver of the vehicle for 07.03.2006. In response, Sh. Amit Reatela, Financial Manager of the firm, appeared before the detaining officer. He was confronted with the facts of the case. After completing his report, the detaining officer forwarded the proceedings to the ETO, ICC, Banur, who issued a notice to the dealer. Consequently, the ETO, ICC, Banur imposed a penalty of Rs.98,506/- vide order dated 17.03.2006.

Against the said order, the dealer-appellant preferred an appeal before the DETC-cum-Joint Director (Inv.), Patiala Division, Patiala, which was dismissed vide order dated 28.11.2008. Feeling aggrieved, the appellant preferred an appeal before the Tribunal.

Before the Tribunal, the main ground taken by the appellant was that the goods in question were never meant for trade in the State of Punjab. They were, in fact, a branch transfer from Pondicherrry to Himachal Pradesh. As such, no evasion could take place under the Punjab VAT Act, 2005. It was stated before the Tribunal that the TIN number of the Punjab dealer had been wrongly mentioned in the challan on account of clerical mistake.

The Tribunal, after examining the whole issue, held that the TIN number of the Punjab dealer could be misleading and in case the dealer sold those goods in the State of Punjab, there was no way of accounting those goods in the account books of the Punjab dealer, as he would take the plea that the goods were meant for the Himachal Pradesh. Finally, the appeal was dismissed by observing that this was not a mistake of technical nature and there was an attempt to evade payment of tax.

Learned counsel for the appellant has argued that the goods were being transported from Pondicherry to Himachal Pradesh and State of Punjab was only a transit State. The transit State can only regulate the passage of goods and cannot impose penalty unless it is established that the goods were meant for that State. Once, CST number of Solan was mentioned on the documents, there was no occasion for the authority to consider the TIN number of Punjab. The respondent-authority could have issued Form-35 to the driver and the penalty could have been imposed if, the driver would not have made the exit of the State of Punjab within the prescribed period of 48 hours under Section 51(4).

Heard, learned counsel for the parties.

In the present case, reference can first be made to Section 51(4) of the Punjab VAT Act, which is reproduced as under:-

> "**51(4)** - The owner or person Incharge of a goods vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check post or information collection centre, as the case may be, and shall furnish in triplicate a declaration mentioned in sub-section (2) alongwith the documents in respect of the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer Incharge shall return a copy of the declaration duly verified by him to the owner or person Incharge of the goods vehicle to enable him to produce the same at the time of subsequent checking, if any: Provided that where a goods vehicle bound for any place outside the State passes through the State, the owner or person Incharge of such vehicle shall furnish, in duplicate, to the officer Incharge of the check post or information collection centre, a declaration in respect of his entry into the State in the

> prescribed form and obtain from him a copy thereof duly verified. The owner or person Incharge of the goods vehicle, shall deliver within forty-eight hours the aforesaid copy to the officer Incharge of the check post or information collection centre at the point of its exit from the State, failing which, he shall be liable to pay a penalty to be imposed by an order, made by the officer incharge of the - 44 - check post or information collection centre equal to fifty per cent of the value of the goods involved: Provided further that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State, shall lie on the owner or person Incharge of the vehicle: Provided further that no penalty shall be imposed unless the person concerned has been given an opportunity of being heard ."

Learned counsel for the appellant has further referred to the Certificate of Registration (Annexure A-1), as per which, the appellant-company is registered in District Solan (Himachal Pradesh). It shows that CST number of the appellant-company is 7976. In delivery challan (Annexure A-2), the CST number is mentioned as "SOL CST 7975", which can be taken to be a typographical error as the registered certificate (Annexure A-1) was with the company. Annexure A-3 bears the GR No.040831 dated 02.03.2006 of M/s CLS Express Instructions Private Limited. The delivery challan was having the TIN number of Punjab as well as CST number of Himcahal Pradesh. At the same time, it was carrying the complete address of the consignee as well as CST number of the appellant.

At the time of generation of necessary information on 06.03.2006 at ICC, Banur, the appellant could have been issued Form-35 to the driver and in case, the driver did not exit the State of Punjab within 48 hours, penalty could have been imposed upon him or the dealer, as the goods were to be delivered in Himachal Pradesh. It is not a case that the driver had not approached the ICC, Banur. Rather, he had all the relevant documents with him. Instead of issuing Form 35, the goods were detained on the ground that there was an attempt to evade the tax in the State of Punjab. Non compliance of the provisions of Section 51(4) of the Act is sufficient ground to set aside the impugned order.

Learned counsel for the respondents has not been able to show any reason, as to why proviso to Section 51 (4) of the Act was not complied with despite the fact that the appellant had produced the delivery challan (Annexure A-2) and GR (Annexure A-3) at ICC, Banur. For non compliance of the above said mandatory provision, the goods had been wrongly detained at ICC, Banur. On this ground itself, the penalty imposed upon the appellant is liable to be set aside.

In view of the above discussion, the impugned order 03.11.2009 (Annexure A-8) along with order dated 17.03.2006 passed by the ETO, ICC, Banur, District Patiala, is set aside.

Appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.04.2023
ajp

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