HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-1-2011 (O&M)
Reserved on 23.01.2023
Pronounced on 17.03.2023

M/s. Crompton Greaves Ltd. ....Appellant

V/s.

State of Punjab and another .....Respondents

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

Present: Mr. Rishab Singla, Advocate
for the appellant.

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

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Ritu Bahri, J.

<u>CM-218-CII-2011</u>

For the reasons mentioned in the application, the same is allowed and the delay of 10 days in re-filing the appeal is condoned.

<u>VATAP-1-2011 (O&M)</u>

The appellant has come up in appeal against the order dated 19.11.2009 (Annexure A-10) passed by the VAT Tribunal, Punjab.

The facts of the case are that the appellant is a dealer engaged in the business of manufacture and sale of electrical goods, electrical fittings at Mumbai and has branches all over India including Jalandhar. The appellant M/s. Crompton Greaves Ltd. purchased EFS KV.350 MVA, Oil type, Extensible Fuse Switchgear from M/s. CG Lucy Switchgears Limited, Nasik and the same were sold to M/s. Arihant Industrial Equipment, Armitsar and the selling dealer was asked to issue Invoice and GR in the name of M/s. Arihant Industrial Equipment, Amritsar in the account of the appellant. The appellant had placed on record following three invoices:

1. Invoice No. 425 dated 21.07.2006 for Rs.3,38,000/- (Annexure A-1).
2. Invoice No. 426 dated 21.07.2006 for Rs.4,29,000/- (Annexure A-2) and
3. Invoice No. 427 dated 21.07.2006 for Rs.4,29,000/- (Annexure A-3).

The goods were accompanied by the Goods Receipts No. 343438, 343439 and 343440 all dated 21.07.2006 from Nasik to Amritsar of M/s. Associated Road Carriers Limited. Goods Receipts are placed on record as Annexures A-4 to A-6. These goods were to be delivered at M/s. Bhusan Thukral Govt. Contractor at Ludhiana who is also the registered dealer in the State of Punjab. The goods were removed from the warehouse of selling dealer/consignor on 21.07.2006 at 08:45 p.m. after payment of excise duty. The consignee i.e. M/s. Bhushan Thukral Govt. Contractor, Ludhiana is registered under the Punjab VAT Act 2005 with TIN No. 03791052117 and this No. was also mentioned on each Invoice and Goods Receipts. The goods vehicle bearing No. RJ-14-2G-8183 loaded with electrical goods and driven by Rajinder Singh reached ICC, Shambhu (Import) on 01.08.2006. The driver incharge of the vehicle had produced following documents:-

1) Invoice No. 0425 dated 21.7.2006 issued by M/s C G Lucy Switchgear Ltd. F-10 MIDC, Ambad Nasik in favour of the above dealer for Rs. 3,38,000/- along with GR No. 343438 dated 21.7.2006 issued by M/s Associated Road Carriers Limited, Kolkata for the transportation of goods from Nasik to

Amritsar.

2) Invoice No. 0426 dated 21.7.2006 issued by M/s C G Lucy Switchgear Ltd. F-10 MIDC, Ambad Nasik in favour of the above dealer for Rs. 4,29,000/- along with GR No. 343439 dated 21.7.2006 issued by M/s Associated Road Carriers Limited, Kolkata for the transportation of goods from Nasik to Amritsar; and

3) Invoice No. 0427 dated 21.7.2006 issued by M/s CG Lucy Switchgear Ltd. F-10 MIDC, Ambad Nasik in favour of the above dealer for Rs. 4,29,000/- along with GR No. 343440 dated 21.7.2006 issued by M/s Associated Road Carriers Limited, Kolkata for the transportation of goods from Nasik to Amritsar.

The ETO on duty found that the goods were to be delivered to M/s. Bhushan Thukral Govt. Contractor at Ludhiana who is also the registered dealer in the State of Punjab. The supply was in account of M/s. Crompton Greaves Limited. There was no GR or any other documents for delivery of goods at Ludhiana. The genuineness of the documents was suspected and the goods were detained. On notice, one Ranjit Singal, Chartered Accountant appeared on behalf of the consignor of the goods. He stated that the supply of goods were F.O.R. and goods were to be delivered to M/s. Bhushan Thukral, contractor at Ludhiana. The designated officer came to the conclusion that the goods were being imported in Punjab on the basis of RC number of other dealers. He found that the documents were not genuine and there was an attempt to evade tax. Therefore, penalty of

Rs.3,58,800/- was imposed under Section 51(7)(b) of the Punjab VAT Act vide order dated 11.08.2006 by the designated officer (Annexure A-7).

On appeal filed against the order dated 11.08.2006, the same was dismissed by the DETC-cum-Joint Director (Inv.), Patiala Division, Patiala vide order dated 19.08.2008 (Annexure A-8). Thereafter, the appellant challenged orders dated 11.08.2006 (Annexure A-7) and 19.08.2008 (Annexure A-8) before the Tribunal. Vide order dated 19.11.2009 (Annexure A-10), the Tribunal dismissed the appeal on the following grounds:-

1. The goods had been dispatched in vehicle No. HR-55-B-5329. However, at the time of reporting at ICC, goods were in vehicle No. RJ 14-2G-8183.
2. There was no explanation at which stage the vehicle had been changed.
3. The GRs were transportation of goods from Nasik to Amritsar and was got prepared by M/s. C.G. Lucy Switchgear Limited self in the account of Crompton Greaves Limited. Sale invoices and GRs were in favour of M/s. Arihant Industrial Equipment of Amritsar.
4. The words 'delivered at M/s. Bhushan Thukral, Government Contractor' were written on the invoices and TIN No. written as 07460256008 was struck of and then TIN No. 033791052117 was mentioned.
5. In the GRs some words account Bhushan Thukral was written in hand and he was stated to be based at Ludhiana.

6. There was no evidence that M/s. Arihant Industrial Equipment was consignee of the goods and had made any sale in transit to M/s. Bhushan Thukral.
7. There were no proper sale documents or endorsement on the documents to show inter-State sale.

Finally, the Tribunal held that the documents in favour of M/s. Bhushan Thukral were not genuine and there was an attempt to evade tax.

Learned counsel for the appellant has referred to the judgment passed by Hon'ble the Supreme Court in ***A & G Projects and Technologies Ltd. vs. State of Karnataka (2009) 19 VST 239 (SC)***, decided on 11.12.2008 on the proposition that whether the sale is inter-State or an intra-State, has to be examined in the light of Section 3 of the Central Sales Tax Act, 1956 and, therefore, it is a mixed question of fact and law. He has further referred to a Division Bench judgment passed by this Court in ***CWP-15705-2010*** titled as ***M/s. Thyssen Krupp Elevator (India) Pvt. Ltd. vs. State of Punjab and another, decided on 27.09.2010*** on the proposition that when the goods were being brought in State of Punjab and was accompanied by invoices and the nature of transaction was inter-State sale and taxes had been paid in the State from where movement of the goods started, the Excise and Taxation Officer-cum-Officer-in-charge, had taken a wrong view that the transaction was of intra-State sale in the State of Punjab as goods were to be used in the works to be executed in the State of Punjab. He has further referred to a Division Bench judgment passed by this Court in ***CWP-4621-2013*** titled as ***M/s. Rions India vs. State of Punjab and others, decided on 18.03.2013*** in which the petitioner was based in Delhi and received an order from Guru Nanak Dev University, Amritsar for supply of water purifiers. The goods were sent through truck and when it reached ICC, Shambhu for giving information as per Section 51 of the Punjab Value Added Tax Act, 2005, the goods were detained. The detention of the goods were being justified on the ground that the order of sale was facilitated by Vicky Scientific Company and that the price had not been received. The Division Bench held that whether the sale was facilitated by Vicky Scientific Company or purchase order was directly made by Guru Nanak Dev University, the nature of the transaction would be inter-State sale. A cost of Rs.50,000/- was imposed on the concerned officer for passing the impugned order.

Learned counsel for the respondents has argued that the documents did not show anywhere that the consignee of the goods M/s. Arihant Industrial Equipment of Amritsar had made sale in transit to M/s. Bhushan Thukral. He argued that there was cutting in the TIN number in the documents and the vehicle which reported at the ICC was having registration No. RJ 14-2G-8183 whereas the GRs showed the goods having been loaded in vehicle No. HR-55-B-5329. He further argued that when the sale was made by M/s. Arihant Industrial Equipment to M/s. Bhushan Thukral without issuing any invoice, it would be easily concluded that the documents were not genuine and there was an attempt to evade tax. He finally argued that the penalty had been imposed by the AETC on M/s. Arihant Industrial Equipment, Amritsar vide order dated 11.8.2006 (Annexure A-7) and M/s. Crompton Greaves Ltd. could not assail that order in the appeal.

After hearing learned counsel for the parties at length and after going through the judgments referred by the petitioner, the facts in the present case which cannot be disputed are that on the GRs and invoices M/s. Arihant Industrial Equipment, Amritsar was the consignee of the goods and had made sale in transit to M/s. Bhushan Thukral. The GRs were self in account of Crompton Greaves Ltd. and in the GRs there was mentioning of M/s. Arihant Industrial Equipment, Amritsar. The Tribunal held that if the sale made by M/s. Arihant Industrial Equipment to M/s. Bhushan Thukral was to be treated as transit sale, then first these facts would be endorsed in favour of M/s. Arihant Industrial Equipment and then by M/s. Arihant Industrial Equipment to M/s. Bhushan Thukral with proper endorsement. Both the above said dealers were based in Punjab. There were no documents to show that it was a transit sale by M/s. Arihant Industrial Equipment to M/s. Bhushan Thukral during the course of inter-State trade. There were no proper transit sale documents or endorsement on the documents, otherwise this sale would be inter-State and it was liable for tax. The Tribunal upheld the penalty imposed under Section 51(7)(b) of the Punjab VAT Act by the designated officer.

In the facts of the present case, it is not in dispute that the goods had travelled from Nasik as it is evident from the invoices which were with the driver and they had been issued by M/s. C.G. Lucy Switchgear Limited. The short question for consideration in the present appeal is that even if the sale is taken as transit sale by M/s. Arihant Industrial Equipment to Bhushan Thukral, Govt. contractor, can it be taken as inter-State sale for the purpose of tax?

In ***M/s. Thyssen Krupp Elevator (India) Pvt. Ltd.'s case (supra),*** the goods were being transported from Maharashtra to State of Punjab. The goods were detained on the ground that the transaction in question was clearly of intra-State sale in the State of Punjab as the goods were to be used in the works to be executed in the State of Punjab. The writ petition was allowed by not giving plea of alternative remedy to the respondents on the ground that once the petitioner had furnished all the information and there was a dispute of taxability, there could not be any attempt of tax evasions. In the same manner in ***M/s. Rions India's case (supra)***, order for purchase of water purifiers was made by Guru Nanak Dev University, Amritsar from the petitioner, which was the dealer registered under Delhi Value Added Tax Act. The goods were detained on the ground that the goods were routed through Vicky Scientific Company, Amritsar to Guru Nanak Dev University, Amritsar and this would amount to inter-State sale. While setting aside order of detention, the Division Bench held that even if the sale was facilitated by Vicky Scientific Company and the petitioner had not received the price and the fact that the goods were travelled from Delhi was enough to give a finding that it was a case of inter-State sale.

The order for purchase could have been directly made by the Guru Nanak Dev University, Amritsar to the petitioner or through medium of another person. In either case the nature of transaction did not cease to be in the course of inter-State sale. Hence, writ petition was allowed.

In the facts of the present case as well, the goods were purchased from M/s. Crompton Greaves Ltd. and it was M/s. Arihant Industrial Equipment, Amritsar who had purchased the goods from M/s. Crompton Greaves Ltd. and during the course of transit of goods, the goods were delivered to M/s. Bhushan Thukral, Govt. contractor at Ludhiana. The detaining officer need not to go in the issues of absence of documents, whether the sale was in transit or whether M/s. Arihant Industrial Equipment had accepted any price of sale from M/s. Bhushan Thukral. He was only required to see the documents that it was a case of inter-State sale which in the present case is not in dispute as the goods were travelled from Nasik to Amritsar.

Hence, in view of the above referred judgments, the appeal is allowed and the order dated 19.11.2009 (Annexure A-10) is set aside.

Pending applications stand disposed of.

(RITU BAHRI)
JUDGE

17.03.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

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