IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.66 of 2011 (O&M)
Date of decision: 11.10.2023

M/s Mamta Steel Corporation

.....Appellant

Versus

The State of Punjab and another

.....Respondents

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

Present: Ms. Nazuk Singhal, Advocate,
for the appellant.

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

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Ritu Bahri, J.

1. The instant appeal, under Section 68 of the Punjab Value Added Tax Act, 2005, has been filed against the order dated 03.06.2011 (Annexure A-6) passed by the Value Added Tax Tribunal, Punjab (for short 'The Tribunal) in Appeal No.386 of 2010, whereby appeal filed by the present appellant against the order dated 30.09.2010 passed by the Deputy Excise and Taxation Commissioner (Appeals), Faridkot Division, Head Quarter, Bathinda, has been dismissed.

2. Brief facts of the case are that on 07.06.2010, two vehicles bearing registration Nos. HR-37-B-6971 and HR-58-9165 carrying iron goods from Ajmer to Mandi Gobindgarh were intercepted and checked by ETO-cum-Designated Officer, Mobile Wing, Bathinda. With regard to the goods being carried, the drivers of the vehicles produced the documents before the ETO. On scrutiny of the documents, it was observed that the goods were not covered by proper and genuine documents, therefore, the same were

detained. After following the due procedure, the matter was submitted to the AETC, Mobile Wing, Bathinda. After conducting an inquiry, penalty was imposed upon the appellant vide order dated 14.06.2010. Against the said order, the appellant filed an appeal, which was dismissed by the Deputy Excise and Taxation Commissioner (A), Faridkot, Head Quarter, Bathinda, vide his order dated 30.09.2010. Feeling aggrieved by the said order, the appellant filed an appeal before the Tribunal.

3. The case of the assessee-appellant, before the Tribunal, was that while coming from Kalianwali (Haryana side) to Mandi Gobindgarh (Punjab), the vehicles had to cross village Kanakwal and nearest Information Collection Centre (ICC) enroute is at Talwandi Sabo in Punjab State. There is no ICC before Talwandi Sabo on this route and this was the nearest route adopted by the vehicles to come to Mandi Gobindgarh. Even earlier, the assessee's vehicles coming from Ajmer used to report the goods at Talwandi Sabo only and at no other ICCF.

4. The Tribunal, after examining the evidence, came to a conclusion that in the invoices, the number of Form VAT 49 has been mentioned, but this Form was not produced before the Detaining Officer/AETC/DETC. Only the bills and goods receipts were produced before the authorities below. Further, as per rough site plan, the distance between Kallianwali (Haryana side) and Kanakwal i.e. the place of interception of vehicles, is 03 Kms and in between Kanakwal and Rama Mandi is 08 Kms. The distance intervening Rama Mandi and ICC Talwandi Sabo is 15 Kms though the distance between Kallianwali (Haryana side) and ICC Talwandi Sabo is only 13 Kms. The Tribunal observed that one starting from Kallianwali (Haryana side) can escape ICC Talwandi Sabo by coming to Mandi Gobindgarh via Kanakwal, Rama Mandi, Kot Shamir and Mansa. The route from

Kallianwali (Haryana side) to ICC Talwandi Sabi via Kanakwal, Rama Mandi being 26 Kms, by no process of reasoning, can be deemed to be shorter than the route between Kallianwali (Haryana side) to ICC, Talwandi Sabi, which is only 13 Kms. The Tribunal has further observed that since earlier also, the assessee's vehicles coming from Ajmer had been reporting the goods at Talwandi Sabo only and no other ICC, it leads to a conclusion that the drivers were cognizant of the fact that they were required to generate the information at ICC, Talwandi Sabo. If, the goods had not been intercepted, the same would have reached their destination without reporting the same at any ICC as no other ICC was to fall on their way up to Mandi Gobindpur. As per the site plan, the route between Kallianwali and ICC, Talwandi Sabo is straight and this was the shortest route. In this case, the drivers, in routine, would have reached the ICC, Talwandi Sabo directly from Kallianwali, being the shortest route, instead of coming to this ICC via Kanakwal. As per the record of the Department, Shri Lalit Prashad, partner of the appellant firm, had admitted that this as on his directions that the drivers had adopted this unusual route and did not got to any ICC. It was held that since the goods were never reported at ICC, Talwandi Sabo, this was an attempt to evade the tax. Ultimately, the appeal qua entry tax of Rs.51,186/- and penalty of entry tax to the tune of Rs.1,02,372/- imposed under Section 4 (2) of the Punjab Tax on entry of goods in Local Ara Act, 2000, was accepted and to this extent the impugned order was set aside. However, penalty of Rs.6,39,827/- imposed upon the assessee under Section 51 (7) (c) of the Punjab Value Added Tax Act, 2005, was upheld and appeal qua this amount was dismissed.

5. Learned counsel for the appellant has argued that the main reason for imposing the penalty under Section 51 (7) (c) of the Punjab Value Added

Tax Act, 2005 is that the distance between Kallianwali to ICC, Talwandi Sabo was 13 Kms, whereas the distance between Kallianwali to ICC, Talwandi Sabo via Kanakwal, Raman Mandi, was 26 Kms and that route could not have possibly been adopted in normal course.

6. After dismissal of the appeal, the appellant-assessee filed a rectification application No.27 of 2011, whch was decided on 16.03.2012 (Annexure A-7). The main ground for rectification was that the appellant, by mistake, had given the distance between Kallianwali to Talwandi Sabo, as 13 Kms, whereas actually, it was 30 Kms. In this backdrop, the penalty has been imposed on the ground of wrong route adopted by the drivers.

7. The Tribunal, after carefully delving into the maps, as relied upon by the parties, came to a conclusion that the route via Malkana and Giana is shorter and straight viz-a-viz via Kanakwal-Rattangarh and Raman. There was a difference of more than 6 Kms between both the routes. The application for correction was dismissed by the Tribunal on the ground that this mistake was not apparent from the record. Reference was made to the judgment passed in ***Satyanaranyan Laxminarayan Hegde vs. Mallikarjun B havanappa, Tiruymale,*** AIR 1960 SC 13. Since the distance between two places was a disputed question of fact, it did not fall within the meaning or expression "mistake apparent from the record.".

8. A perusal of the order dated 16.03.2012 (Annexure A-7) passed by the Tribunal while dismissing the application for rectification shows that the Tribunal had accepted that there was a difference of more than 6 Kms between both the routes. However, the application was dismissed on the ground that this was not the mistake apparent from the record.

9. The only short question for consideration before this Court is, if the distance has been wrongly reflected, why it cannot be corrected to

absolve the appellant of the penalty imposed upon it vide the impugned order. It is not the case of the respondents that the drivers were not carrying the invoices/bills when the vehicles were intercepted by the competent authority. Once the drivers had accepted that there was a mistake in calculating the distance, the very reason for imposing the penalty does not survive. Non reporting of goods before the ICC, Talwandi Sabo cannot be made a ground to impose the aforesaid penalty. This is so held by this Court in ***M/s Sharda Solvent Ltd. vs. State of Punjab and another,*** VATAP No. 41 of 2011 (decided on 11.04.2023.).

10. In view of the above discussion, it is held that the appellant-assessee is not liable to pay the penalty, as imposed by the respondent-department. Hence, the present appeal is allowed and the impugned, whereby penalty was imposed upon the appellant, is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.10.2023
ajp

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