IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-8-2012 (O&M)
Date of decision:- 11.10.2023

M/s Dixon Technologies India (P) Ltd ....Appellant

vs.

State of Punjab and anr. ...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

***

Ritu Bahri, J.

The present appeal has been filed under Section 68 of the Punjab Value Added Tax Act, 2005 (for short 'Act 2005') seeking setting aside of order dated 07.10.2011 (A-8) passed by the Tribunal.

The case in brief is that the appellant is a dealer registered under the Punjab VAT Act and the Central Sales Tax Act, 1956 and deals in manufacturing and sale of CFL and Colour television for Philips and Weston respectively. The appellant used to receive the raw material from head office at Noida. In the normal course of its business, the Head Office at Noida sold the goods to M/s Philips India Ltd., but same were sent to the appellant's premises at Mohali for job work, which was to be done by the appellant for M/s Philips India Ltd., Pune. The goods were covered with the following documents:-

(i) Invoice No. 000157 dated 19.06.2009 issued by M/s Dixon Technologies India (P) Ltd. in favour of M/s Philips India Ltd., Pune delivery at M/s Dixon Utilities and Export Pvt. Ltd., Central Hope Town, Salqui industrial Area, Dehradun amounting to Rs.16,27,383/-. (Annexure A-1)

(ii) VAT/Tax/IBTM Invoice No.000530 dated 19.06.2009 issued by M/s Dixon India (P) Ltd.,Noida in favour of M/s Dixon Technolgies India (P) Ltd., Mohali. (Annexure A-2)

It is submitted that in the Invoice No.157 mentioned above, the address of consignee was mistakenly printed as that of Dehradun concern as the computer operator selected the name of consignee as M/s Dixon Utilities and Export Pvt. Ltd., Central Hope town, Salqui Industrial Area, Dehradun instead of M/s Dixon Technologies India (P) Ltd., Mohali from the Drop Down menu in the software being used by the Noida Office for generating Invoices/Bills, but, in the log book prepared by the transporter the destination was duly mentioned as Mohali Annexure A-3 (colly).

While entering the State of Punjab, the driver of the vehicle voluntarily reported at ICC for generating necessary information and VAT-36. The Excise and Taxation Officer detained one of the consignments covered vide Invoice No.157 on the ground that the goods were to be delivered at Mohali but in the invoice, the destination of consignee is Dehradun.

In response to the notice, the Manager of the Mohali branch appeared before the detaining officer and submitted a written reply stating therein that goods were to be delivered at Mohali Branch and the address of Dehradun Branch was mentioned inadvertently and due to clerical mistake, as the Computer operator mistakenly chose the Name of Dehradun concern instead of Mohali Branch. It was pleaded before the Officer that same is liable to be ignored, as it was a human error. Moreover, the Dehradun branch does not deal with these goods. So, there is no reason to send the goods to Dehradun branch. Further, to substantiate his claim, the appellant submitted the registration certificate of M/s Dixon Technologies (India) P. Ltd., Dehradun issued by the Taxation Department, Dehradun. Annexure A-4. In any case the driver would not submit the wrong documents voluntarily. The production of documents showed the bonafide of the assessee.

The detaining officer referred the case to enquiry officer for action u/s 51(7) of PVAT Act. However the goods were released on furnishing bank guarantees. The representative of Mohali branch appeared and furnished all Account Books, sale/purchase Vouchers and other necessary documents with the written reply stating therein, that the address of Dehradun Branch was mentioned by mistake and same is liable to be ignored. However, AETC imposed penalty of Rs.4,88,215/- under section 51(7) (b), vide order dated 30.06.2009 Annexure A-5, on the ground that goods were not covered with proper & Genuine documents and there was an attempt to evade the tax ignoring the fact that once the goods are reported voluntarily, there remains no scope of this transaction going out of the books of accounts of the dealer as the goods were reported voluntarily at the ICC by the driver. The TIN No. of Mohali could have been easily obtained by the computer clerk as it was available in the other documents also.

Feeling aggrieved by the order of AETC, the appellant preferred an appeal before Dy. Excise and Taxation (Investigation) Patiala Division, Patiala pleading therein that the penalty imposed by Penalizing Officer is unjustified and wrong as it was due to clerical mistake that the address of

Consignee was wrongly mentioned. However, Appellate Authority dismissed the appeal of appellant, vide order dated 05.10.2010 Annexure A-6 by concluding that there was an attempt to evade the payment of tax.

Feeling aggrieved, an appeal Annexure A-7 was filed before the Tribunal. However, the Tribunal dismissed the appeal on order 07.10.2011 (A-8) on the ground that plea of the appellant that the said mistake has occurred due to clerical error cannot be accepted, as the appellant was carrying the goods without any Invoice relating to delivery of goods to M/s Dixon Technologies (India) P. Ltd. Hence the present appeal.

While issuing notice of motion on 18.04.2012, this Court found the following substantial question of law arose for determination of this Court:-

> *"1. Whether facts and in the circumstances of the case the Ld. Tribunal was justified in upholding the penalty under Section 51(7)(b) on account of deficiency in the documents with regard to correct name and address of consignee, despite the fact that documents were produced voluntarily at the ICC, which rules out any evasion of tax?*
> *2. Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in not following its own judgment on the similar issue despite the fact that it was delivered by the same member?"*

At the very outset, learned counsel for the petitioner has referred to Division Bench judgment of this Court in a case of ***LG Electronics India Pvt. Ltd vs. State of Punjab and another***, 2014 (47) PHT (82) P&H wherein similar issue was decided in favour of the assessee, who was dealing in manufacturing of Electronic goods, colour tv, air conditioner etc and had country wide network with branches including the one at Ludhiana. It also sent the goods to stock transfer basis to various branches from its head office at Noida. It sent 184 sets of colour TV to its Ludhiana Branch on stock transfer basis. The driver of the vehicle produced the documents at ICC Shambhu (Import). The officer on duty detained the goods on the ground that no invoice for 23 number of TV sets meant for Ludhiana was accompanying the goods. A penalty was imposed, which was upheld uptil the Tribunal. This Court allowed the appeal and observed as under:-

"The explanation furnished by the appellant appears to be bonafide and under the circumstances, it cannot be said that there was any attempt to evade tax. The goods in question were transported from Greater Noida to Ludhiana whereas in the documents, it was mentioned as Lucknow. The appellant had submitted that the Code mentioned in the computer for Lucknow was 'LUC' whereas for Ludhiana it was 'LUD'. It was by mistake that 'LUC' was pressed and printed instead of 'LUD' and therefore inadvertent mistake had occurred. The appellant had produced the following documents before the ETO on duty:-

"1.Invoice No.10137174 dated 13.11.2009 for Rs. 1255154 issued by M/s L.G.Electronics India Pvt. Limited Greater Noida in favour of M/s L.G.Electronics India Pvt. Limited, Ludhiana.

2. Invoice No.10137172 dated 13.11.2009 for Rs.208780 issued by M/s L.G.Electronics India Pvt. Limited greater Noida in favour of M/s L.G. Electronics India Pvt. Limited. Central Warehousing Corporation, Sitapur Road, Lucknow.

3. G.R.No.146715 dated 14.11.2009 of M/s Coastal Roadways Limited, Kolkata from Greater Noida to Ludhiana.

4. Packing list."

If there was intention on the part of the appellant to evade tax, it would not have voluntarily furnished Invoice No.10137172 for Rs.2,08,780/- in respect of 23 Colour TVs which were dispatched from Greater Noida to Ludhiana. It was not disputed that the driver of the vehicle *had presented both the invoices i.e. No.10137174 and 10137172 in respect of the goods amounting to Rs. 12,55,154/- and Rs. 2,08,780/- respectively. One consolidated GR No.146715 from Greater Noida to Ludhiana alongwith the packing list was also presented. In such circumstances, it could not be said that there was an attempt to evade tax. Moreover, there was no tax liability at the stage of entry of goods in the State of Punjab as they were coming from Greater Noida to the branch at Ludhaina. The Tribunal had taken different view from the one as had been taken in* ***M/s Karwa Consolidated Marketing Limited's case (supra)*** *under similar circumstances without giving any reasons. No justification has been pointed out for adopting different approach. "*

Learned counsel for the respondent has not been able to cite any judgment contrary to the above.

Heard.

In the present case as well, the Tribunal while dismissing the appeal of the appellant observed that all previous transactions running into crores had correctly been entered at Mohali. However, it was held that this fact could not absolve the appellant from producing true and correct invoice pertaining to the current transaction. In our considered opinion, the findings so given by the Tribunal are liable to be set aside, as it was merely a clerical mistake, that only the name of the consignee was wrongly mentioned while picking the name of the appellant from drop-down menu in the software used by the Noida Head Office of the appellant. Futher, it is not being disputed that the Dehradun Branch in whose favour, the invoice was mistakenly generated, does not deal with the goods, which were being transported, vide invoice No. 157. Penalty can be imposed to evade tax and not for bona fide mistake. The driver in the present case voluntarily reported the goods at ICC Jharmari for generating necessary information and goods were accompanied by all the necessary documents.

In view of the above discussion, the substantial questions of law are answered in favour of the appellant and against the revenue, as penalty cannot be imposed upon the appellant on account of a clerical mistake. The appeal stands allowed and order dated 07.10.2011 (A-8) passed by the Tribunal is set aside.

(RITU BAHRI)
JUDGE

11.10.2023 **(MANISHA BATRA)**
G Arora **JUDGE**

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