

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

VATAP-2-2013 (O&amp;M)

Date of decision:- 14.03.2023

M/s Escorts Ltd, Faridabad

....Appellant

vs.

State of Haryana and ors.

...Respondents

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

Present: Mr. Rajiv Agnihotri, Advocate, for the appellant

Ms. Mamta Singla Talwar, DAG, Haryana

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**Ritu Bahri, J.**

The present appeal has been filed under 36 of the Haryana Value Added Tax Act, 2003 (for short 'Act 2003') seeking setting aside of orders dated 12.08.1994, 23.03.1995, 13.07.2012, 31.07.2012 (A-3).

The case in brief is that the appellant-Company is engaged in manufacturer of motorcycle, which are sold not only with the State of Haryana but in the other States also where they have depots. The appellant-Company filed its return before the appropriate assessing authority, Faridabad for the quarter 01.04.1990 to 30.06.1990 on 31.07.1990 in which the total turnover of Inter-State Sales as per column No. 4 was shown as 30,41,65.307.88/- and the total tax payable was shown as Rs. 01,27,04,894.17/-.

However, during this period, a consignment of motor cycles of

the appellant-company sent from Faridabad to its Gaziabad and Secundrabad depots, was checked at Sales Tax Check Barrier (STCB), Faridabad and it was found that the appellant had shown the Inter-State Sales as branch transfers with a view to evade the tax due to the State.

Vide order dated 15.09.1990, the Checking officer imposed a penalty of Rs. 02,14,985/- under section 9(2A) of the Central Sales Tax Act (in short CST Act') read with section 37 (6) of the Haryana General Sales Tax Act, 1975 (in short HGST Act'), which was on remanded by the JETC (A) was reduced to Rs.1,94,051/-, vide order dated 28.03.1994. Detailed verifications were made from Ghaziabad and Secundrabad Depots regarding stock transfers from Faridabad. As a result of these verifications, the appellant-Company revised these two returns on 17.02.1991 by converting excess stock transfers into Inter State Sales and paid tax due according to the revised returns.

The Deputy Excise and Taxation Commissioner (DETC) thereafter, imposed penalty of Rs.29,00,000/- and Rs.27,00,000/- under Section 9 (2A) of the CST read with Section 48 of HGST Act for the first two quarters of 1990-91 respectively, vide order dated 12.08.1994. Aggrieved against this order, the appellant filed an appeal, which was also dismissed on 22.03.1995. Thereafter, the appellant preferred two appeals before the Tribunal at Chandigarh, which were also dismissed on 28.06.2012. Hence the present appeal.

Learned counsel for the appellant has argued that when the assess-appellant itself filed a revised return voluntarily during the return period as two more returns are yet to be filed, before initiation of any assessment proceedings for the relevant year and before the assessment is

finalized, the imposition of penalty would not be justified. Further the appellant filed returns under protest.

Learned counsel has further argued that there is no suppression of turnover to attract penalty under Section 48 of Haryana General Sales Tax Act, 1973.

Learned counsel is relying upon the following judgments:-

1. *State of Tamil Nadu vs. Lucky Radio House*, 1995 SCC Online Mad 804
2. *M/s Jagat Tractors vs. State of Haryana*, STI 1981 PB & HN. Tribunals 182
3. *Khosla Mills vs. State of Punjab and others*, 1972 SCC Online P&H 424
4. *M/s Hindustan Steel Ltd vs. State of Orissa*, 1969 (2) SCC 627
5. *Anantharam Veerasinghaiah and Co. vs. CIT*, 1980 Supp SCC 13

On the other hand, learned counsel for the State has argued that the appellant was not honest and has not disclosed the actual tax liability. He was making inter State sales by dispatching goods to the dealers situated outside the State of Haryana. It was only after a detention of a consignment at the STCB, Faridabad that the appellant was made to revise the first two quarterly returns after verification from the Depots of Ghaziabad and Faridabad.

Heard learned counsel for the parties at length.

The judgments cited by learned counsel for the appellant are of no help to the appellant.

In *Lucky Radio House's case (supra)*, Hon'ble Madras High Court was dealing with a case of assessee against whom a penalty of Rs.597/- was levied under Section 12 (5) (iii) of the Tamil Nadu General Sales Tax Act, 1959 for failing to report the sales turnover of steel furniture that is for filing return with incorrect particulars. The appeal filed

by the State was dismissed on the ground that the assessee filed revised return before completing the assessment by the assessing officer.

In *M/s Jagat Tractors case (supra)*, the dealer filed the first quarterly return for the period 30.06.1975 to 30.07.1975 showing a turnover of Rs.1,86,596/- relating to tractors, on which the tax due of Rs.5516.20 was deposited by the dealer on 30.07.1975. The dealer then filed a revised return on 30.10.1975 showing turnover at Rs.4,86,596/- and deposited the different of tax amounting to Rs.9180/-. The dealer was issuing order of penalty under Section 48-A of HGST Act. However, the appeal was allowed and it was held that false accounts were not maintained nor the sales were suppressed. Only the return was wrong, which was rectified by filing fresh return.

In *Khosla Mills case (supra)*, the dealer had filed appeal against the judgment of learned Single Judge. The dealer was imposed penalty by the Assessing Authority to the tune of Rs.1,25,000/- for filing false return under Section 10 (7) of the Punjab General Sales Tax Act wherein the dealer has argued that *mens rea* has to be established by the department before imposing the penalty. The question which was to be examined that whether in view of the terms of the contract between the dealer and the commissioner agent in their course of transaction, it was the dealer or the commissioner agent who was liable to pay the purchase tax. The appeal was allowed and it was held that impugned order imposing penalty was passed without any material on record to show that there was a deliberate concealment with a view to avoid payment of the tax and without there being any clear finding in that respect, cannot be sustained and has to be

set aside.

In *M/s Hindustan Steel Ltd's case (supra)*, the main questions before Hon'ble the Supreme Court was that whether the Company sold building material during the relevant period, the Company was a dealer in respect of building material within the meaning of the Orissa Sales Tax Act, whether the imposition of penalties for failure to register as a dealer was justified. It was held that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or acted in conscious disregard of its obligation. Penalty will not be imposed merely it is lawful to do so.

In *Anantharam Veerasinghaiah's case (supra)*, Hon'ble the Supreme Court was examining a case of assessee who was an Abkari Contractor. He filed a return of his income. The Income Tax Officer did not accept the correction of the return. He observed that the assessee had concealed the particulars of his income and furnished inaccurate particulars of its, and therefore, imposed a penalty of Rs.75,000/- under Section 27 (1) (c ) of the Income Tax Act, 1961. The appeal was disposed of and the matter was remanded back to the Appellate Tribunal to take up the appeal and to re-determine it conformably to the judgment. It was held by Hon'ble the Supreme Court that the fact that there exists a fund of secret profits or undisclosed income of an earlier assessment year would not mean that the said fund is necessarily the source of unexplained expenditure of cash credits recorded in a subsequent assessment year. There mere availability of such fund cannot in all cases imply that the

assessee had not earned further secret profits during the relevant assessment year.

Heard.

Reference at the very outset can be made to Division Bench judgment of this Court in a case of *Sant Lal Tek Chand vs. State of Haryana, 2005 (142) STC 135* wherein this Court was dealing with a case filed by State. The Sales Tax Tribunal, Haryana referred the following substantial questions for the opinion of the Court:-

(i) Whether in the facts and circumstances of the case, the Tribunal was justified in upholding the penalty u/s 48 of the Haryana General Sales Tax Act, 1973 ?

(ii) Whether in the facts and circumstances of the case, the Tribunal was justified in inferring deliberateness in filing the third quarterly return by ignoring the explanation of the petitioner?

(iii) Whether in the facts and circumstances of the case, the Tribunal was justified in confusing the words "withholding" with the words "evasion of tax" and was right in law in upholding the penalty when the turnover for the whole of the year as returned by the petitioner in the return of paddy has been accepted and the assessment made for the whole of the year?" (In the original reference order as well as statement of case sent to this Court, the Tribunal has, by mistake used the word "concluding" but with the consent of the learned Counsel for the parties, we have read the word "confusing" instead of the word "concluding" because the said word does not make any sense).

In this case, the petitioner was running a rice sheller in Kaithal and was also doing the business of commission agency. It is registered as a dealer under the Haryana General Sales Tax Act, 1973. It has been filing returns under Section 25 (2) of the 1973 Act. In the third quarterly return filed for the period ending on December 31, 1975 (assessment year 1975-76), the petitioner did not disclose the purchase of paddy valued at Rs. 9,20,554 and did not deposit the tax, i.e., Rs. 65,727 as required by Section 25(3). While finalising the assessment, the Assessing Authority noted that the petitioner had not filed correct return and observed that this was done

with a view to avoid the payment of tax. He, therefore, issued notice to the petitioner proposing to levy penalty u/s 48 of the 1973 Act. The same was accompanied by a detailed memo containing the facts relating to the incorrect return. In the reply filed on behalf of the petitioner, it was pleaded that difference between quarter to quarter is due to the practice of paying tax on receipt of sale proceeds invoice. It was also pleaded that the legal requirements of paying tax on purchase value at the time of dispatch is impracticable by reason of impossibility of computing the purchase value of paddy. It was further pleaded that the tax due for the third quarter had been paid in the fourth quarter. In the course of hearing before the Assessing Authority, the petitioner's representative submitted that the tax was withheld in the third quarter to tide over the financial crisis faced by the firm. The Assessing Authority did not accept the explanation of the petitioner and imposed penalty of Rs. 1,31,455 vide his order dated May 10, 1980. The first appeal filed by the petitioner was dismissed by Joint Excise and Taxation Commissioner (Appeals) Ambala and the second appeal was dismissed by Tribunal, vide order dated 20.05.1987.

This Court referred to Section 25, 46, 47 and 48 of 1973 Act and have referred to *Khosla Mills case (supra)* and *Hindustan Steel Ltd's case (supra)* and allowed the appeal of the State by observing in para No. 23 to 25 as under:-

23. In our opinion, none of the aforementioned judgments support the petitioner's plea because, as mentioned above, the facts brought on the record of this case show that the petitioner had deliberately suppressed the purchase of paddy valued at Rs. 9,20,554 and knowingly did not pay the tax due as per the requirement of Section 25(3) before filing the third quarterly return. The admission made by the petitioner's representative before the

Assessing Authority that the particulars of purchases were suppressed and the tax was not paid because of the financial stringency leaves no manner of doubt that the petitioner had deliberately acted in violation of Section 25(2) and (3) of the 1973 Act and thereby made itself liable for penalty u/s 48. We may add that if this Court is to accept the plea, like the one set up by the petitioner as bona fide, then in all cases, the assessee would suppress the particulars of sales and purchases, refrain from paying tax due and then take similar defences.

24. Before parting with this aspect of the matter, we consider it proper to notice the judgment of the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), in some detail. The respondent was a partner in the firm M/s. Haji Sk. Md. Hussain Md. Jan of Calcutta. While making assessment for the year 1947-48, the Income Tax Officer discovered an undisclosed bank account of the assessee with the Central Bank of India Ltd., Bettiah, Bihar. It was found that a cash deposit of Rs. 87,000 had been made by the assessee on November 21, 1946. He was asked to explain the source of amount of deposit. He pleaded that the amount was entrusted to him by his relatives who got panicky during the communal riots in Bihar in 1946. The Income Tax Officer did not accept the explanation of the assessee and held that Rs. 87,000 represented his undisclosed income. This addition was maintained by the Appellate Assistant Commissioner and the Tribunal. After finalisation of the assessment, penalty proceedings were initiated u/s 28(1)(c) of the Income Tax Act, 1922. The Income Tax Officer imposed penalty of Rs. 66,000. This was reduced by the appellate authority to Rs. 44,000. Subsequently, he rectified the order u/s 35 and confirmed the penalty of Rs. 66,000. The Tribunal took the view that penalty proceedings were criminal in nature and the onus lay on the department to show by adequate evidence that the amount of cash was of a revenue nature and that the assessee had concealed it or deliberately furnished false particulars. The Tribunal held that no penalty could be imposed on the assessee because no evidence was brought on record to show that he had deliberately furnished incorrect particulars of income. Their Lordships of the Supreme Court held that penalty proceedings were quasi-criminal in nature and burden lay on the department to establish that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. In the present case, the department will be deemed

to have discharged the burden because the material brought on record amply establish that the petitioner had knowingly filed incorrect return and suppressed the purchase of paddy valued at Rs. 9,20,554 with a view to avoid payment of tax in terms of Section 25(3), so-much so that its representative unequivocally admitted before the Assessing Authority the factum of filing incorrect return, but tried to justify the same on the pretext that this was done to tide over the financial difficulty.

25. The argument of Shri Sawhney that action could have been taken either u/s 46 or Section 47 of the 1973 Act is meritless. Section 46 is applicable to the cases in which the dealer fails, without sufficient cause, to file return in terms of Sub-section (2) of Section 25 and Section 47 is applicable to the cases in which the dealer fails to pay tax due as per the requirement of Sub-section (2A) or Sub-section (3) of Section 25. Neither of these provisions are applicable to a case, like the present one in which the assessee knowingly filed false return and suppressed the purchase made with a view to avoid payment of tax as per the requirement of Sub-section (3) of Section 25 of the 1973 Act."

This judgment is directly applicable to the facts of the present case, as in the present case, a consignment of motor cycles destined to Ghaziabad and Secunderabad Depots were checked at STCB, Faridabad and a penalty was imposed under Section 9 (2A) of the CST Act read with Section 37 (6) of HGST Act, 1973. The verification regarding stock transfer to Ghaziabad and Secunderabad Depots from Faridabad was also made. The assessee admitted the certain branch transfer in the original return as inter state sales. The dealer filed revised returns for first and second quarter showing an enhanced turnover of inter state sales and paid additional tax. It is not in disputed that the assessee filed the returns late on 17.02.1991 in respect of first quarter and the assessee had suppressed turnover during these two quarters in which inter-state sales were shown as

branch transfers, which later on admitted by the assessee on account of certain detection made at STCB Faridabad. This shows the lack of bona fides on the part of appellant's part as he did not file the revised returns under Section 25 (4) of the 1973 Act and waited till the filing of fourth return. The appellant had deliberately filed incorrect return and omitted to pay the amount of tax due and thus contravened Section 25 (2) and 3 of 1973 Act. The penalty has rightly been imposed by the Assessing Officer. The assessee filed his revised return when his vehicle was confiscated. The *mens rea* and deliberate attempt to conceal and suppress the taxable turnover by fabricating or maintaining false returns with a motive to evade the payment of tax due are the essential ingredient of Section 48 of HGST Act. No material was brought on record by the assessee to prove any deliberateness. The Assessing Officer had enough ground to impose penalty under Section 48 of the Act.

No substantial question of law arises for consideration in the present appeal and the same stands dismissed.

**(RITU BAHRI)**  
**JUDGE**

**14.03.2023**  
G Arora

**(MANISHA BATRA)**  
**JUDGE**

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