IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 36 of 2016 (O&M)
Date of decision: 11.01.2023

The State of Punjab and others

...........Appellants

Versus

M/s KRBL Ltd.

..........Respondent

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

Present: Mr. Saurabh Kapoor, Addl. A.G., Punjab,
for the appellants.

Mr. Sandeep Goyal, Advocate,
for the respondent.

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Ritu Bahri, J.

This appeal, under Section 68 of the Punjab Value Added Tax Act, 2005, has been filed against the order dated 25.01.2016 (Annexure A-6) passed by the Value Added Tax Tribunal, Punjab, whereby appeal filed by M/s KRBL Ltd.-appellant (respondent herein) against the order dated 05.06.2013 passed by the First Appellate Authority, Patiala and order dated 09.04.2013 passed by the Assistant Excise and Taxation Commissioner, Sangrur, has been accepted.

Respondent-M/s KRBL Ltd. is a dealer and engaged in the business of sale and purchase of paddy/rice being the Rice Sheller, situated at village Bhasaur, Dhuri. The firm is duly registered under the provisions of Punjab VAT Act, 2005 as well as the Central Sales Tax Act, 1956. The respondent-firm has been purchasing paddy from Punjab and other states for export purposes and also receives paddy/rice from other branch offices for

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job work. Apart from this, the firm also use to send its own rice form sorting, grinding, grading and packing to its head office at Delhi. Initially, vide order dated 22.03.2012, the Assistant Excise and Taxation Commissioner had recorded that the respondent had sufficient purchase orders for export and paddy has been purchased against those purchase orders and rice was exported, against which, it had claimed exemption. It was further observed that goods worth Rs.69,56,11,897/- were received from other branches and after doing job work, the same were returned. While filing VAT-20, the respondent had exposed about the consumption of husk for captive generation of power. Ultimately, a demand of Rs.4,40,625/- was created, which had been deposited by the respondent. However, consequent upon the audit objection, a notice dated 26.12.2012 (Annexure A-3) under Section 29 (7) of the Punjab Value Added Tax Act, 2005 was given to the respondent, stating therein the firm had deposited short payment of purchase tax and caused loss to the revenue. Respondent filed reply to the said notice. The Assistant Excise and Taxation Commissioner, Sangrur, passed an assessment order dated 09.04.2013 (Annexure A-4) and created additional demand on account of tax, penalty and interest to the tune of Rs.13,88,29,925/- against the respondent for the year 2009-2010. This order was challenged by the respondent by filing an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala. However, the same was dismissed vide order dated 05.06.2013 (Annexure A-5). Feeling aggrieved, the respondent approached the Value Added Tax Tribunal, Punjab (VAT Tribunal). During the pendency of appeal before the VAT Tribunal, the respondent was associated vide order dated 08.12.2014 and an enquiry was got conducted from the Assistant Excise and Taxation Commissioner, Sangrur. The enquiry report was submitted before the VAT

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Tribunal on 19.06.2015. Thereafter, the appeal filed by the respondent was allowed vide order dated 25.01.2016. Hence, the present appeal.

The respondent is exempted unit for purchase tax under Punjab VAT Act as well as under Punjab Infrastructure (Development and Registration) Act, 2002 for exporting Basmati rice out of India. The respondent has been in litigation since the year 2004-05 when the unit was installed at village Bhasaur, Dhuri, District Sangrur. Earlier, the assessments for the years 2004-05, 2005-06 and 2006-07 were challenged and the matter reached upto the Deputy Excise and Taxation Commissioner, who had remitted the case back to the Assessing Authority with a direction for reconsideration and framing fresh assessment. Fresh assessment was framed on 08.05.2009, which was challenged before the Deputy Excise and Taxation Commissioner. Again, the case was remitted to the Assessing Authority, but the appellant filed appeal before the Tribunal. The Tribunal, vide order dated 02.10.2010, had observed as under:-

> "From the perusal of all the statements, it is sufficiently clear that paddy purchased in Punjab and sent to Kandia Port for export out of India, stands substantially proved and is allowed in toto."

However, the case was remitted to the Designated Officer on certain other issues. Initially, the department was of the view that the rice shellers were required to deposit purchase tax first on the purchase of paddy and the parties could claim refund in case the goods are exported out of the country. A notice, in this regard, was issued by the department, which was challenged by the appellant (respondent herein) before this Court by filing CWP No.19366 of 2010. While deciding the said petition, it was held that the said transaction being not taxable in the first place, the question of paying tax and asking of the refund later on, is totally unacceptable.

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Reference was made to the judgments passed in ***Bhawani Cotton Mills vs. State of Punjab,*** AIR 1967 SC 1616, ***SAIL vs. State of Orissa,*** (2008) 1TdSTC 297, ***State of Haryana vs. Nipha Exports Pvt. Ltd.,*** (2007) 7 VST 466. Despite the above said order, assessment for the year 2009-10 was framed on 22.03.2012 and the department stuck to the traditional view and proceeded to rectify the return vide order dated 09.04.2013 under Section 29 (7) of the Act for deposit of tax on the purchases made for the export of rice against the advance export orders.

The present appeal was admitted on 08.07.2016. Learned counsel for the respondent has referred to the judgment passed by a Division Bench this Court in ***KRBL Limited through its Authorised Signatory Sh. Mahesh Jain vs. State of Punjab and others,*** (2011) 39 PHT 56 (P&H) on the proposition that where the assessee was exporting rice after purchasing paddy, the assessee was not required to pay purchase tax. In that case, this Court proceeded to quash the notice dated 30.09.2010, as per which, the dealers were asked to deposit the tax at the time of purchase of paddy and they could claim refund of the same as per Rule 52 of the Punjab VAT Rules, after exporting rice procured out of the paddy. Learned counsel for the appellant has referred to another judgment passed by the Allahabad High Court in ***KRBL Limited vs. Commisioner of Trade Tax,*** (2010) 29 451 (All), wherein the petitioner was engaged in the manufacture of basmati rice and had been granted a recognition certificate under Section 4B(2) of the U.P. Trade Tax Act. In that case, the petitioner claimed the benefit of notification no.289 dated 12.02.1999, wherein it had been provided that no tax would be payable either on the purchase of raw material or on the sale of finished goods i.e. the notified goods, if the same were being exported outside the country. The assessing authority held that 4.75% of the rice

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manufactured came out in the shape of broken rice, which could not be exported and that therefore, the petitioner was liable to pay tax on the raw material i.e. paddy to the extent of the broken rice, which emerged during the process of manufacture. The Allahabad High Court allowed the appeal filed by the assessee by observing that the paddy, which was used during the manufacture of the notified goods was used separately for the broken rice, which emerged during the process of manufacture. The assessee had used entire raw material for manufacture of rice and if, a small percentage of the raw material used, has emerged as a waste product or as by-product in the shape of broken rice, the Government could not impose purchase tax on purchase of paddy. However, the department was given liberty to tax the assessee on the sale of broken rice.

Applying the ratio of the above two judgments on the facts of the present case, this Court is of the opinion that the Tribunal has rightly examined the issue and allowed the appeal filed by the respondent-assessee by observing that the standards for yield published by the State Government are qua the paddy of the qualities other than Basmati and no standards for percentage of yield from Basmati paddy had been fixed. The department was claiming purchase tax in violation of the mandatory provisions of the Central Sales Tax Act and the Punjab Value Added Tax Act itself. The assessee had sent 70% of the paddy procured on stock transfer basis and purchase tax had been paid on 70% of the average price of Rs.1956.10, which came to Rs.1409/- per quintal. In the month of July, 2013, the entire paddy had been used for the purpose of export for which, export orders were already in hand. While allowing the appeal, the Tribunal has further observed that stock transfer was made only of extracted rice and not of paddy. The rice procured and sent to its branches on Alipore/Ghaziabad and the total yield

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was to the tune of 64%. The remaining yield was attributable to rice husk bran and *phuk* etc., which were sold locally, on which, sales tax has been paid or used in the captive consumption for the generation of power. The rice, which was sent on stock transfer basis was about 70% of the paddy procured for this purpose and as such, the purchase tax on 70% of the average price, was rightly paid. Hence, after deducting the payment of tax on rice bran and husk, value of the rice on which tax has been paid in case of branch transfer, it comes at the same rate at which tax has been used in captive consumption for generation of power, which has already been used in production of Saila Rice, exported out of the Country.

In the judgments, referred to above, it has been categorically observed that the State Government cannot impose purchase tax with the provision that it can be claimed in refund of the goods, which are exported out of the Country. In view of the above discussion, no ground is made out to interfere in the impugned order, as the same has been passed after appreciating the facts in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

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

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