IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.47 of 2016
Date of Decision: 09.01.2023

M/s. Indofarm Equipments Limited ... Appellant

Versus

State of Punjab and others ... Respondents

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

Present: Mr. Gaurav Mohunta, Advocate,
for the appellant.

Mr. Saurabh Kapoor, Additional Advocate General, Punjab.

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MANISHA BATRA, J.

1. The present appeal has been directed against the order dated 11.01.2016 passed by the Punjab Value Added Tax Tribunal (for short "Tax Tribunal") whereby an order dated 01.02.2013 passed by the Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation), Patiala (for short "Taxation Commissioner") and order dated 14.10.2010 passed by the Excise and Taxation Officer-cum-Incharge, Information Collection Centre, Ghanauli, Ropar (for short "Taxation Officer") whereby penalty to the tune of Rs.3,79,770/- had been imposed under Section 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (for short "Act, 2005") had been upheld.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the appellant-Company is engaged in the business of manufacturing and sale of tractors and cranes at Baddi, Himachal Pradesh and is holding registration No.SOL III 5967/CST 5680. The

appellant gets job work for manufacturing purposes done from M/s. Sahil Engg. Works, Village Majri, District Mohali (**for short “M/s Sahil”**) for the purposes of carrying out its manufacturing activities. It had placed a purchase order No.5500003363 dated 14.08.2010 for 2000 EA (pieces) of TC-60011032 Crank Case Casting and 2500 EA (pieces) of TC-40011007 Crank Case 3 Bore to M/s. Ghatge Patil Industries Ltd., Uchagaon, Kolhapur, Maharashtra (**for short 'vendor'**). The said order was valid up to 31.03.2011 and as per the mutual agreement, the material was to be dispatched in small consignments. It was also stipulated in the purchase order that the casting without fettling was to be delivered to M/s Sahil Engg. Works,, Village Silba Majre, Kurali for fettling purposes and the same was to be invoiced to the appellant. The vendor of the appellant while acting upon the purchase order dated 14.08.2010 generated a bill no.5172 dated 07.09.2010 for 10 pieces of rough cast GR iron (Crank case 3 cylinders 40011007) worth Rs.99,677/-. It was invoiced and dispatched in the name of the appellant. The material was dispatched from Kohlapur through TCI freight vide GR No.603877831. The driver of the vehicle declared transaction of the said goods in VAT form XXXV (transit slip) at Information Collection Centre (ICC), Lalru (Punjab).

3. It was further submitted that one more Bill No.5173 dated 07.09.2010 had been issued by the vendor of the appellant for 117 pieces of Rough Cast GR iron (crank case 3 cylinders 40011007) for Rs.11,66,219/- against another purchase order which too had been invoiced in the name of the appellant but was dispatched to M/s Sahil for fettling purposes i.e. for doing job work. The material was dispatched through TCI freight vide GR No.603877820. The driver declared transaction of the said goods also at

ICC, Lalru in VAT form XXXVI. It was submitted that though both the consignments were dispatched through same vehicle but inadvertently, the driver unloaded all the material at the premises of M/s Sahil at Mohali though job work of fettling was to be done by the latter only on 117 pieces and not on 10 pieces of rough cast GR Iron that were dispatched through bill No.5172. The fettling work was done only on 117 pieces and M/s Sahil raised bill No.96 dated 16.09.2010 for a sum of Rs.13747.50/- as fettling charges for those pieces. It also raised a bill No.98 dated 16.09.2010 for a sum of Rs.35.25/- as loading and unloading charges qua the remaining 10 pieces of cast Iron. The appellant due to inadvertence issued job work challan bearing No.3935 dated 12.09.2010 for all 127 pieces instead of 117 pieces. After completion of fettling work, M/s Sahil dispatched 117 pieces of rough cast iron over which job work was done and 10 other pieces through truck No.HR-46-C-9922 driven by Inderjit driver vide GR No.495 dated 16.09.2010. When the driver was declaring goods at ICC, Ghanauli, Ropar, the checking officers detained the same for verification under Section 51 (6) of Act, 2005 on the ground that there was no reference or challan in favour of M/s Sahil and the transaction covered by invoice No.5173 was not declared by the driver in the requisite form VAT 35 (transit slip) and further that the vehicle number mentioned in the covering documents was different from the vehicle from which the goods were consigned.

4. It was further submitted that a show cause notice was also issued to the owner of the goods to explain the position. Then on 21.09.2010, the detaining officer forwarded the proceedings to respondent No.3 i.e. Taxation Officer and a notice was issued by him to the owner of

the goods to explain the nature of transaction and to disclose the details of real consignor who had dispatched the goods. The authorized representative of the appellant appeared before respondent No.3 and presented its case. However, vide order dated 14.10.2010, the respondent No.3 imposed a penalty of Rs.3,79,770/- under Section 51(7) of the Act, 2005 on the ground that no proper and genuine documents were issued by the vendor of the appellant in favour of M/s Sahil and the goods consigned to the latter did not match with the goods mentioned in bills No.5172 and 5173 issued by the vendor. The appellant preferred an appeal against the said order before the respondent No.2 but the same was dismissed vide order dated 12.02.2013. The appellant then preferred an appeal before the Tax Tribunal which too was dismissed vide order dated 11.01.2016.

5. Feeling aggrieved from the order passed by the Tax Tribunal, the appellant-assessee preferred the present appeal on the grounds that invoices for total 127 pieces of rough rough iron crank cases were issued by the vendor and Central Sale Tax had already been paid by the appellant at the time of purchase. The bills issued by M/s Sahil showed that fettling was done on 117 pieces of rough iron crank cases. There was no discrepancy with regard to the goods purchased and goods to be delivered to the appellant. In the purchase order, there was a specific clause that casting without fettling was to be invoiced in the name of the appellant but was to be delivered to M/s Sahil for fettling purposes. As such, the impugned order passed was liable to be set aside.

6. The learned State counsel, on the other hand, submitted that the order passed by the Tax Tribunal did not suffer from any patent perversity and was not liable to be set aside. Hence, it was urged that the appeal was

liable to be dismissed.

7. We have heard learned counsel for the appellant and learned State counsel for respondents and have gone through the material available on record.

8. A perusal of purchase order Annexure A-2 shows that the appellant had placed order for purchase of crank case casting and crank case 3 bore with the vendor on 14.08.2010 and as on 07.09.2010, 10 pieces of rough cast GR iron crank cases worth Rs.88596.90/- and 117 pieces of rough cast GR iron crank cases worth Rs.10,36,583.73/- were dispatched and tax invoices bearing No.5172 and 5173 shown as Annexures A-3 and A-4 were issued. 117 pieces of rough cast iron crank cases were to be dispatched to M/s Sahil for job work though they were invoiced to the appellant whereas 10 pieces of crank cases were directly invoiced to the appellant. Undisputedly all these 127 pieces were unloaded in the premises of M/s Sahil and after doing fettling/job work on 117 pieces of crank cases, M/s Sahil had issued two invoices with regard to those 117 pieces as well as 10 pieces while claiming loading, unloading charges on the same as no job work was done. No transaction of sale had taken place in the area of Punjab. The driver of the vehicle had shown all the invoices at ICC, Ghanauli. Though in Form VAT-35 (transit slip), no declaration as to the transaction covered by invoice No.5173 was alleged to have been made by the driver but since the transaction between the vendor and the appellant was clearly reflected from the invoices and since CST had been duly paid, therefore, there could not be stated to be any evasion of tax. Nothing had been brought on record to prove that the goods were intended to be used or sold in the State of Punjab. Rather the material placed on record clearly indicated that

117 pieces of cast crank cases had been brought into the State of Punjab for job work while on transit and the remaining 10 pieces were also for transit purposes. The absence of any written agreement between the appellant and M/s Sahil for receiving goods at Mohali did not give rise to any inference that the goods were intended to be sold at Mohali. The mere possibility of a local sale would not clothe the officials of the respondents to take such an action when there was no material on record to indicate that an attempt was made by the appellant to deliver the goods at a different place and to sell them in the local market by evading payment of tax. As such the observations made by the Tax Tribunal affirming the findings returned by respondent No.2 cannot be stated to be sustainable. Accordingly, the appeal is allowed and the impugned order dated 11.01.2016 passed by Tax Tribunal is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.01.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No