IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.67 of 2016 (O&M)
Date of decision: 04.05.2023

M/s L.S. Rice Exports Pvt. Ltd.

.....Appellant

Versus

The State of Punjab

.....Respondent

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

Present: Mr. Surjeet Bhadu, Advocate,
for the appellant.

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

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Ritu Bahri, J.

The instant appeal, under Section 68 of the Punjab Value Added Tax Act, 2005, has been filed against the order dated 19.02.2016 (Annexure A-7) passed by the Value Added Tax Tribunal, Punjab (for short 'The Tribunal) in Appeal No.309 of 2015, whereby appeal filed by the present appellant against the order dated 04.03.2015 passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala, has been dismissed.

Brief facts of the case are that the appellant ,vide bill No.720 dated 17.08.2012, sold Sela rice worth Rs.8,84,585/- to Sh Jai Balaji Trading Company, Delhi. As per invoice the goods were for export only and the sale was against 'H' form. However, while preparing the invoice (Annexure A-1), by mistake, instead of Sela, Basmati was written. The said goods were loaded in Truck No. PB-13-N-9118. When the goods were checked by ETO (Mobile Wing), Chandigarh, the driver produced the following documents:-

(1) Bill No.720 dated 17.08.2012 issued by M/s LS Rice

Exports Pvt. Ltd., Samana in favour of M/s Jai Balaji for Rs.8,84,585/-.

(2) GRNo.26141 dated 17.08.2012 issued by M/s Truck Operators Union, Samana.

On verification, it was detected that sale made against the 'H' form and goods mentioned on the bill as 'Rice Basmati', were varying as per physical verification of the goods conducted at the spot, as on physical verification, the goods in the truck were actually found to be 'Rice Sella', whereas the invoice was regarding 'Basmati Rice'. Consequently, the goods were detained. It was explained to the officer that the goods were sent for the purpose of export and there was no involvement of tax. The case of the appellant was that the mis-description of 'Basmati' and 'Sella' would not make any difference as the rate of tax was same and in case the transaction was being in course of export, no tax was involved.

During the course of proceedings, the appellant produced Importer-Exporter certificate (Annexure A-2) of M/s Jai Balaji Trading Company, Delhi along with the purchase order (Annexure A-3) for supply of Sella rice for export. However, vide order dated 03.09.2012 (Annexure A-4), the Assistant Excise and Taxation Commissioner (AETC), Mobile Wing, Chandigarh, imposed the penalty of Rs.2,65,376/- under Section 51 (7) (b) of the Act.

The said order was challenged by the appellant before the Deputy Excise and Taxation Commissioner (Appeals), Patiala (DETC). During the pendency of appeal, 'H' form along with purchase agreement was produced. Apart from this, Importer/Exporter certificates of the purchasing dealer were also produced. However, vide order dated 04.03.2015 (Annexure A-6), the DETC dismissed the appeal filed by the appellant. Feeling aggrieved, the appellant filed an appeal before the Tribunal, which was also dismissed vide order dated 19.02.2016 (Annexure A-7). Hence, the present appeal.

Vide order dated 09.09.2016, the present appeal was admitted on the following substantial questions of law:-

> "(i) Whether in the facts and circumstances of the case, Section 51 (7) (b) of the Act can be invoked when there is no tax involved in the transaction?
>
> (ii) Whether in the facts and circumstances of the case, the penalty under Section 51 can be invoked merely on the ground that there is a clerical error of describing the quality of rice while preparing the invoice?
>
> (iii) Whether in the facts and circumstances of the case, the documents produced could be ignored and penalty under Section 51 could be imposed without making an inquiry?
>
> (iv) Whether in the facts and circumstances of the case, the order of the Tribunal is perverse as the Tribunal passes the order on assumption which is against the documents on record."

When the case was taken up for hearing today, learned counsel for the appellant informed the Court that in the present case, the impugned order was passed by imposing the penalty of Rs.2,65,376/- on the ground that the appellant had shown the sale of 'Basmati' against 'H' form and had tried to evade the tax. This order relates to the assesment year 2012-2013. Learned counsel for the appellant has informed that with respect to the said year i.e. 01.04.2012 to 31.03.2013, the sale of 'Sella Rice' was shown as zero rated sales against 'H' form (i.e. export) and no demand of tax has been raised in the assessment order dated 27.03.2017.

Learned State counsel, on instructions, has informed that the assessment order has attained finality and hence, sales of Rs.18,48,92,657/- made against 'H' form have been taken to be as exports. This issue had attained finality. Keeping in view that while passing the assessment order, 'H' form had been accepted, the same form cannot be made basis for imposing the penalty.

A perusal of the impugned order further shows that the books of accounts as well as export licence of the consignee were also produced and placed on record. The 'H' form was issued to the appellant-company on 17.08.2012 for an amount of Rs.8,84,585/-. A perusal of the assessment order further shows that no reference was made to this sale made by the appellant-company to Sh Jai Balaji Trading Company, Delhi for Rs.8,84,585/- as per 'H' form (Annexure A-5), for which, the penalty has been imposed.

Since the assessment order has attained finality, no case for imposing any penalty with respect to the alleged sale as per 'H' Form is made out.

In view of the above discussion, the present appeal is allowed and the impugned orders dated 03.09.2012, 04.03.2015 and 19.02.2016 (Annexures A-4, A-6 and A-7) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

04.05.2023
ajp

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