IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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VATAP No.96 of 2016 (O&M)
Date of Decision: 18.01.2023

M/s Pernod Ricard India Pvt. Ltd. ... Appellant

Versus

The State of Punjab and another ... Respondents

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

Argued by: Mr. Puneet Aggarwal, Advocate,
for the appellant.

Mr. Alankar Narula, Assistant Advocate General, Punjab.

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MANISHA BATRA, J.

1. This appeal has been filed assailing the order dated 23.05.2016 passed by Value Added Tax Tribunal, Punjab, Chandigarh (for short "the Tribunal") in Appeal No.146 of 2015. The following questions of law have been raised for consideration:-

> "a. Whether input tax credit can be disallowed inspite of the appellant fulfilling the substantive conditions prescribed under Section 13 of the PVAT Act, on a sole ground that the said credit is being taken against the purchases made in the name of another company, which although stood merged with the appellant company?
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> b. Whether the input tax credit can be denied in a case where the assessing authority has accepted/assessed the subject goods as purchases of the

Appellant, and in respect of which the Appellant has paid the due tax; and which goods were used in the manufacture of final products for sale cleared on payment of due VAT?

c. Whether a substantive benefit under a statute can be denied to the appellant for no fault of his, for the sole reason merely on the basis of a technical glitch/mistake/procedural irregularity made by the supplier of the appellant? More so, when the said mistake stands duly corrected by way of issuance of corrigendum by the supplier?

d. Whether subsequent correction of the mistake by the Vendor by way of corrigendum is sufficient compliance of the requirements of the PVAT Act/Rules regarding availment of ITC?

f. Whether the impugned order has travelled beyond the scope of the appeal, having brought new facts and findings on records, which were never raised at any earlier level of assessment proceedings/litigation?

j. Whether there can be any levy of penalty under section 56(e) and section 60 of the PVAT Act, in absence of any notice in this regard, in absence of providing any opportunity of being heard and in complete absence of any finding in the original order with respect to such levy of penalty?

k. Whether there can be any levy of interest under section 32 of the PVAT Act, especially, without specifying the specific sub-section under which the same has been levied, more so, when the instant case is not even covered by any of the express provisions prescribed under section 32 of the PVAT Act?

2. The relevant facts in brief are that M/s Rocky Distilleries Pvt. Ltd. (for short "M/s Rocky") was wholly owned subsidiary company of the appellant which is a Private Limited Company. The appellant filed a petition under Section 391 of the Companies Act, 1956 before High Court of Delhi for seeking approval of scheme of amalgamation with its subsidiary company M/s Rocky. The said scheme was approved vide order dated 30.10.2007. Thereafter, a petition was filed by the appellant before this Court for approval of scheme of amalgamation which too was allowed vide order dated 11.01.2008. Consequent to these approvals, the appellant had moved Registrar of Companies for issuance of fresh certificate of incorporation which was so issued on 27.03.2008. The appellant had given information about amalgamation of its subsidiary company in prescribed Form VAT-5, for the purpose of amending its registration. It had also filed an application with Excise and Taxation Commissioner, Punjab for endorsement of its name in the excise licence of its subsidiary company and had informed the assessing officer that till the approval of that application, it would continue to conduct business activities of the unit in the name of its subsidiary company. The Excise and Taxation Commissioner had accorded sanction to change the name of subsidiary company in the excise licence. Information to this effect was also given by the appellant to the assessing officer on 01.02.2009 vide Annexure A-7 and thereafter the TIN number of the subsidiary company was surrendered with the VAT Department.

3. It was further submitted that though information regarding amalgamation of the subsidiary company with the appellant was sent to all suppliers of raw material/packing material with request to mention the name and TIN number of appellant in the subsequent supplies but one supplier namely, M/s A.B Grain Spirits Pvt. Ltd. (for short "vendor") continued supplying Grain Neutral Spirit (GNS) in the name of and by quoting the TIN number of M/s Rocky though the payment of Rs.68,62,500/- on account of purchase of GNS was also made by the appellant. The premises of appellant were inspected by the officers of the revenue on 19.02.2009 and notice was issued seeking clarification regarding the transactions of purchase of GNS from the vendor. The appellant produced a corrigendum issued by the vendor thereby acknowledging the mistake of mentioning TIN number of M/s Rocky and its name in the invoices as issued on account of sale of GNS and for correcting the same in view of the corrigendum. However, the assessing authority while ignoring that corrigendum, denied benefit of Input Tax Credit (ITC) on purchases of GNS worth Rs.61 lacs made by the appellant from the vendor. A show cause notice was then issued against the appellant which was duly replied. The reply of appellant was rejected and assessment order dated 27.09.2012 was passed thereby disallowing the ITC amounting to Rs.7,62,500/-. Penalty amounting to Rs.15,25,000/- under Section 56 (e) of the Punjab Value Added Tax Act, 2005 (for short "PVAT Act") was also issued against the appellant without giving any opportunity of hearing. Apart from this, tax interest amounting to Rs.6,76,480/- was also levied under Section 32 of the PVAT Act upon the appellant without assigning any reason.

4. Feeling aggrieved from the assessment order dated 27.09.2012,

the appellant filed appeal before Deputy Excise and Taxation Commissioner (Appeal), Patiala (for short "DETC (A)") which was dismissed vide order dated 08.08.2014. The appellant filed an appeal against the said order before the Tribunal which was partly allowed vide order dated 23.05.2016. The assessing authority was directed to examine the genuineness of the 'D' forms and then decide the matter regarding the demand of Rs.2,25,347/-. However, the relief claimed by appellant against disallowance of the claim of ITC on purchases of GNS was declined and aggrieved from the same, the instant appeal has been filed by the appellant.

5. Impugning the action of the respondents in rejecting the claim of ITC on GNS purchased by the appellant from the vendor and while assailing the findings as given by DETC (A) and the Tribunal, it was strenuously argued by learned counsel for the appellant that it was well proved on record that the vendor of GNS had been duly informed about the factum of amalgamation of M/s Rocky i.e. subsidiary company of the appellant with the latter and it was only due to inadvertence on the part of the vendor that the invoices qua GNS purchased by the appellant, were issued in the name of and with the TIN number of its subsidiary company. He submitted that the invoices so issued depicted the description and price of the goods, excise duty and the VAT charged upon the same. It was the appellant who had paid the money qua the GNS so purchased and hence it was the appellant who was entitled to claim credit of any tax paid at the time of purchase of GNS. The appellant had no control over the mistakes committed by the vendor while issuing the invoices. As such, it could not be penalized especially in view of the fact that the vendor while admitting its mistake had issued a corrigendum thereby making correction in the invoice

qua the name of purchaser and its TIN number. The said corrigendum had been submitted by the appellant with the assessing officer and, therefore, the claim for ITC was very much admissible to the appellant.

6. Learned counsel for the appellant further stressed that the Tribunal while passing the impugned order dated 23.05.2016 had travelled beyond the scope and had delved on the grounds which were never canvassed by the revenue and which the appellant was never required to meet. He argued that as such the impugned order disallowing ITC and imposition of penalty and interest, was liable to be set aside since it had been passed in gross violation of principles of natural justice and without considering the grounds validly raised by the appellant and the appeal deserved to be allowed. In support of his argument, learned counsel relied upon authorities cited as **New Devi Grit Udyog v. State of Haryana and others,** VATAP No.37 of 2014 decided on 08.09.2015 by a Coordinate Bench of this Court; **M/s Avdesh Tracks Private Limited v. The State of Punjab and another,** VATAP No.34 of 2012 decided on 02.08.2016 by a Coordinate Bench of this Court; **Multi Metal Products v. Commissioner of Sales Tax, M.P.**, (1999) 112 STC 605 (MP) & **Reckitt & Colman of India Ltd. v. Collector of Central Excise,** (1997) 10 Supreme Court Cases 379.

7. Per contra, it was argued by learned counsel representing the revenue that the orders passed by the authorities below were well reasoned and did not warrant any interference. The ITC was available to the dealer could be allowed only against original VAT invoice that contained the requisite information. The invoices as issued by the vendor in this case could not be related with the appellant in any manner whatsoever since the

same had been issued in the name of M/s Rocky with its TIN number and not with the TIN number of the appellant or in its favour. He submitted that these invoices were issued by the vendor after the time when the subsidiary company had already been amalgamated with the appellant-Company and the act of the appellant of still purchasing GNS in the name of the subsidiary company showed that payment of tax was tried to be evaded by it. Therefore, it was urged that the impugned orders were correctly passed and that the appeal was devoid of any merit and was liable to be dismissed.

8. We have heard learned counsel for both the parties at considerable length and have carefully gone through the documents placed on record. Before delving on the issues as raised, it will be appropriate to refer to certain relevant provisions of law. As per Section 13 (1) of the PVAT Act, a taxable person is entitled to the ITC, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period. As per Sub-Section 12, ITC shall be allowed only against the original VAT invoice and will be claimed during the period in which such invoice is received. Then as per Sub-Section 15, the onus to prove that the VAT invoice on the basis of which ITC is claimed, is bona fide and is issued by a taxable person shall lie on the claimant. Further, as per Rule 21 of the Punjab Value Added Tax Rules, 2005 (for short "the Rules"), ITC shall not be admissible to a person for tax paid on purchase of goods, if such goods are lost, or damaged beyond repair or in respect of such purchases for which he accepts from the selling person, an invoice which has not been duly obtained from a taxable person against the bona fide transaction; does not contain all the required information; has been issued by person whose certificate of registration has been cancelled

and in certain other circumstances. On a bare reading of these provisions, it is explicit that the benefit of ITC can be claimed by and is available to an assessee who proves that the transaction is bona fide, that the credit is available against original VAT invoice and further that it can be claimed during the period in which such invoice was received. The appellant produced on record copies of invoices issued by the vendor during the period from 15.01.2009 till 29.01.2009. On perusal of these invoices, it is revealed that VAT @12.5% had been paid on the amount of GNS purchased vide the above invoices. These invoices were also having description about the quantity and rate of GNS. The only shortcoming on the basis of which ITC was denied to the appellant and penalty as well as interest were imposed upon it, was that these invoices did not contain the name and TIN number of the appellant and instead thereof, they contained the name of subsidiary company of the appellant which had merged with it and it was not in existence at the time of issuance of these invoices and the TIN number of that subsidiary company. The appellant produced on record a copy of letter dated 01.02.2009 received by the department on 03.02.2009 whereby the VAT registration certification of subsidiary company was surrendered with the department by the appellant though the date of amalgamation of the subsidiary company with the appellant-Company is mentioned as 05.01.2009 in this letter. However, simultaneously it is explicit that the registration certificate of subsidiary company was surrendered only on 03.02.2009. It was not the case of the revenue that ITC on the basis of these invoices had been claimed by any other person, company or by the subsidiary company. The revenue authorities had not examined the fact that tax, credit of which was being sought by the appellant, had infact been paid by it to the vendor at the time of purchase of goods and, therefore, there could be no doubt about the genuineness of the transaction. The question as to whether the claim of the appellant was genuine or not was a question of fact. The authorities of the revenue were required to record a satisfaction that its claim was in order and such satisfaction, in our opinion, could be recorded on the basis of documents produced on record along with the corrigendum issued by the vendor to the effect that the TIN number and name of subsidiary company had been inadvertently recorded by it in the invoices issued in the relevant period. The purpose of incorporation of Rule 54 (3) in the Rules, 2005 to the effect that the invoice should contain the full name and address of the consignor/selling dealer with its TIN, nature of transaction, name and address of the purchaser/consignee, description of goods and quantity of goods etc., is to safeguard the interest of revenue from non-genuine transaction. This rule is procedural in nature and does not confer any substantive right. The assessing officer did not undertake the exercise of recording satisfaction on the basis of the corrigendum issued by the vendor who by producing the original invoices and corrigendum had discharged the onus of proving that it was entitled to claim ITC and the transaction was genuine. GNS was purchased by the appellant from the vendor who was undoubtedly registered dealer and as discussed above, the invoices showed that the goods were tax paid. The authorities could examine whether the invoices were bogus and were procured by the appellant in collusion with the vendor but this was not the case of the revenue. In such circumstances, the revenue was required to allow the claim of the appellant as to ITC, once it was not held by it that the goods were tax paid and genuineness of declaration as to purchase of goods was not in question. The assessing officer and the authorities below had ignored the fact that there was no doubt about the genuineness of the transaction. In our opinion, the assessing officer was required to record a satisfaction as to the fact that the claim of the appellant was in order or not but no such exercise had been undertaken. In **New Devi Grit Udyog's** case (Supra), the tax invoices did not contain the name of the buyer and also its TIN number. It was held by a Coordinate Bench of this Court that such circumstance could not be held to be conclusively against the purchaser. It was held that in the event of non-mentioning of the name and TIN number of the buyer, onus was cast on the dealer to produce material to show that transaction was genuine and that it had made payment of VAT to the seller. It was not within the control of the purchaser to ensure that the tax invoice contained his name and TIN number as it is issued by the seller. Unless a mandatory duty is cast on the seller to issue tax invoice with such particulars, the purchaser could not be penalized for no fault of theirs. In **M/s Avdesh Tracks Private Limited's** case (Supra), the selling dealer was a manufacturing unit covered under the provisions of the Central Excise Act, 1944. For sale of goods to the appellant, it had issued invoice-cum-excise gate pass containing name, address, registration number, description, date, quantity and rate of goods. The only discrepancy was that it did not contain the words "Input Tax Credit is available to a person against this invoice". The ITC available to a person and the genuineness of the transaction otherwise had not been examined by the authorities to record a finding that the tax, credit of which was being sought by the appellant, had infact been paid by him to the selling dealer at the time of purchase of goods. It was held by a Coordinate Bench of this Court that the Tribunal was not justified in rejecting the claim of ITC merely on technicalities, when the dealer was able to show that the tax had been paid to the selling dealer and was duly deposited with the State. In **Multi Metal Products's** case (Supra), it was observed by Madhya Pradesh High Court that once the purchasing dealer produced the bill of registered dealer then it was to be presumed that the goods had suffered the incidence of tax. In case of any doubt/suspicion, the assessing authority could call upon that the goods had suffered the tax or not. The burden of assessee i.e. purchasing dealer was discharged once invoices qua tax paid goods were issued and shown and he could not be held responsible to go around to collect the material in order to get the rebate. In view of this settled position of law, we are inclined to hold that the DETC (A) and the Tribunal were not justified in rejecting the claim of appellant of ITC as the appellant had been able to show that the tax had been paid by it to the vendor of GNS purchased by it and the same stood duly deposited with the State. To remove the shortcoming in the transaction of mentioning the name and TIN number of M/s Rocky, had also been removed by the appellant by producing the corrigendum issued by the vendor in that regard. As such, the ITC claim of the appellant could not be rejected on the ground that the tax invoices issued by the vendor did not contain the TIN number and name of appellant, as the appellant had been able to justify the genuineness of the transaction by producing evidence before the assessing officer and the orders passed by the DETC (A) and Tribunal to the contrary on the point have become liable to be set aside.

9. Another argument had been raised to the effect that the Tribunal had acted beyond its competence by considering pleas which were

not the subject matter of the assessment order nor had been raised by the revenue before the DETC (A). It was pointed out that while passing the impugned order, the Tribunal had observed that the transactions reflected between the appellant and the vendor were pursuant to the permits got obtained by the subsidiary company of the appellant from the Excise Department on 12.01.2009, 22.01.2009, 23.01.2009 and 29.01.2009 respectively i.e. after the amalgamation of the subsidiary company with the appellant and it could not be stated that the supplier had acted in good faith while mentioning the name of the subsidiary company on the invoices. It is reflected that neither in the assessment order nor before the DTEC (A), the revenue had taken any plea that the transaction of sale of GNS shown in favour of M/s Rocky was pursuant to some permits and the same was not in good faith. The appellant obviously was never put to meet this ground. As such, the ground so taken into consideration by the Tribunal while denying the exemption, not being canvassed by the revenue earlier was incompetent, in our opinion. In this regard, we rely upon **Reckitt & Colman of India Ltd.'s** case (Supra) as cited by the learned counsel for the appellant, wherein, the case of the revenue which the appellant was required to meet at every stage from the issuance of show cause notice onwards, was that the product was a preparation basis of starch. The Tribunal held that the product fell outside the ambit of exemption because it was a preparation with a basis of flour. It was held by Hon'ble Apex Court that it was beyond the competence of the Tribunal to make out in favour of the revenue a case which the revenue had never canvassed and which the appellant had never been required to meet. On that ground alone, the appeal of the assessee was allowed. For the reasons as discussed above, we are of the considered opinion that the appeal deserves to be allowed. The same is accordingly allowed. The impugned orders are set aside. The matter is remitted to the assessing authority to pass fresh assessment order in accordance with law and keeping in view the observations made above by us to the effect that the tax invoices on the basis of which ITC had been claimed by the appellant could not be rejected on the ground that the same did not contain the name of the appellant and its TIN number.

10. Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

18.01.2023
manju

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