Neutral Citation No.**2023:PHHC:055705-DB**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.218 of 2014
Date of Decision: 12.04.2023

M/s Makhan Lal Suresh Kumar & Bros ... Appellant

Versus

The State of Haryana and another ... Respondents

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

Argued by: Mr. Rishab Singla, Advocate,
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

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MANISHA BATRA, J.

1. The present appeal has been filed under Section 36 of the Haryana VAT Act, 2003 (for short "Act, 2003") by the appellant-assessee against the order dated 25.02.2014 passed by Haryana Tax Tribunal (for short "the Tribunal").

2. The facts relevant for the disposal of this appeal are that the appellant is a dealer duly registered under the provisions of Delhi VAT Act as well as Central Sales Tax Act (for short "CST Act") having a particular TIN number and is engaged in the business of trading of food commodities on intra state basis only. The appellant stores food commodities traded by it in a cold storage named as M/s Dhingra Ice and

Cold Storage Pvt. Ltd., Narela Road, Kundli situated in the State of Haryana. On 18.09.2012 it had sent 330 bags of kabuli chana from Delhi to the above named cold storage for the purpose of storage of the same. These goods were to be brought back to Delhi at the business place of the appellant and no tax was involved in the State of Haryana. While the goods were being transported towards Kundli in a vehicle bearing No.RJ02/GA-7040, the same were intercepted by the respondent No.2 and were detained under Section 31 (6) of the Act, 2003 on the ground that the same were being transported without any proper and genuine documents and hence required verification. The driver of the vehicle had produced copy of Form DVAT-33. Still a notice under Section 31 (8) of the Act, 2003 read with Section 9 (2) of the CST Act been served upon the appellant to prove genuineness of the transaction. The appellant submitted reply to the notice on the same day explaining that the goods were brought only for storage purposes and were to be sent back after some time to Delhi wherein the appellant had been carrying out its business and there was no attempt to evade payment of tax on its part. However, the detaining officer without holding any enquiry levied penalty amounting to Rs.1,08,000/- upon the appellant on the same day. The appellant challenged the order of detaining officer by filing appeal before the Appellate Authority who upheld the order of detaining officer vide order dated 05.02.2013 holding that the driver of the vehicle was not in possession of the requisite documents at the time of checking by the detaining officer. Appeal filed by the appellant against the order dated 05.02.2013 before the Tribunal was also dismissed vide order dated 25.02.2014.

3. Feeling aggrieved, the instant appeal has been filed by the appellant posing the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the order of the Ld. Tribunal is illegal inasmuch as the detaining officer has passed the order on the same very day on which the detention has been made.
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> (ii) Whether on the facts and circumstances of the case, the order of the Ld. Detaining Officer is violative of the principles of natural justice as the same has been passed without even considering the reply filed by the appellant and no independent enquiry has been conducted to ascertain the genuineness of the transaction?
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> (iii) Whether on the facts and in the circumstances of the case, the findings of the Ld. Tribunal are perverse in nature?"

4. Learned counsel for the appellant argued that the impugned order as passed by the Tribunal was liable to be set aside as the fact that at the time of detention of the vehicle itself, a written reply had been submitted by the appellant saying the genuineness of the transaction and explaining that the goods in question were meant for storage purposes, had been ignored. A grave error was committed by not considering the documentary evidence produced by the appellant before the appellate authority. The penalty had been wrongly imposed. The reply filed by the appellant had not been considered and principles of natural justice had been violated. The impugned order was passed the same day as of detention without giving any reasonable opportunity of hearing. With these broad arguments, it was

submitted that the impugned order was liable to be set aside, the penalty imposed was liable to be declared illegal as there could be no evasion of tax and the appeal deserved to be accepted. To fortify his argument, learned counsel for the appellant has placed reliance upon authority cited as **M/s Ganpati Foods v. The State of Punjab and another**, (2014) 67 VST 348.

5. Per contra, it was argued by learned State counsel that the vehicle transporting goods of the appellant had been detained on 18.09.2012 in the vicinity of District Sonepat. The driver of the said vehicle could not produce any document and could not explain the manner in which the goods were being transported from Delhi to Haryana. The appellant was given due opportunity to explain his stand and had submitted reply before the respondent No.2 which was considered but was not found to be genuine as no document in the form of Form DVAT-33 as authenticated by the consignor or any challan in the name of owner of the cold storage wherein goods were taken for storage purposes could be produced. The only photocopy of the Form DVAT was shown which too was not in proper form and clearly established that the same was a manipulated document. No goods receipt accompanying the transaction showing the destination of the good was shown so as to prove that the goods were to be carried for the purpose of storage. She argued that as the goods were being transported in the State of Haryana without any proper or genuine document, therefore, a clear cut case of tax evasion had been made out and, that is why tax and penalty had been imposed. Due opportunity was given to appellant and reply filed by it was also considered. She argued that no infirmity could be found in the orders passed by the authorities below as well as the Tribunal

and hence, it was argued that the appeal was liable to be dismissed.

6. On a perusal of the material placed on record and after giving due deliberations to the contentions as raised by both the sides, we are of the considered opinion that the arguments raised by the appellant lack any merit. Admittedly, the goods i.e. kabuli chana kept in 330 bags was being transported by the appellant from Delhi to Kundli, District Sonepat i.e. in the State of Haryana. It has come on record that when the goods were brought from Delhi to State of Haryana, no original Form DVAT-33 which was required to be statutorily issued had been shown by the driver. When the authorized representative of the appellant had appeared before the Detaining Authority, even at that time only photocopy of Form DVAT-33 had been shown which was not found to be complete as neither the serial number of the vehicle in which the goods were transported, signatures of the consignor and consignee nor the goods receipts accompanying the transaction showing the destination of the goods to be delivered were shown. As such, the stand taken by the appellant that the goods were being sent for storage purposes only had not at all been substantiated. It is revealed from the impugned order as passed by the Tribunal that it was only before the First Appellate Authority that some documents issued by one M/s Dhingra Cold Storage were tried to be shown by the appellant though at stage, such document could not be taken into consideration as Section 33 (3) of the Act, 2003 specifically bars acceptance of the same in appeal proceedings. The Tribunal after considering all facts and circumstances had passed a well reasoned order which for the reasons mentioned above, calls for no interference. No question of law much less substantial question of

law arises in this case. Hence, finding no merit in the appeal, the same is dismissed.

(RITU BAHRI) **JUDGE**	**(MANISHA BATRA)** **JUDGE**

12.04.2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No