

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. VAT Appeal No.178 of 2018

M/s Max Valves and Regulators Pvt. Ltd. ... Appellant

Versus

State of Haryana and another ... Respondents

2. VAT Appeal No.212 of 2018

M/s Max Valves and Regulators Pvt. Ltd. ... Appellant

Versus

State of Haryana and another ... Respondents

Date of Decision: 17.02.2023

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

Argued by: Mr. Rajiv Sharma, Advocate,
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

MANISHA BATRA, J.

1. This common order shall dispose of the above mentioned two appeals i.e. VAT Appeal No.178 of 2018 and VAT Appeal No.212 of 2018, which have been preferred against a common order dated 17.04.2018 passed by Haryana Tax Tribunal, Chandigarh (for short “Tribunal”) in STA Nos.427 and 428 of 2014-15.

2. The facts relevant for the purpose of disposal of both the appeals are that the appellant-Company is duly registered under Haryana Value Added Tax Act, 2003 (for short “HVAT Act”) as well as under

Central Sales Tax Act, 1956 (for short “CST Act”). It is engaged in the business of manufacturing and sale of self closing valves (SC Valves) and domestic pressure regulators (DPRS) mainly for Oil Marketing Companies related to LPG cylinders, 4 way manifold and adopter vent pipes and their parts. It has opened its sale outlets/branches in several States including Hyderabad, Indore, Mumbai and Kerala where it transfers its manufactured goods as branch transfer. Sales persons on commission basis have been appointed by the appellant for sale of its products. It was submitted that for the assessment year 2009-10, the appellant had filed all the four quarterly returns in form VAT R-1 in time and had showed a GTO @ Rs.8,72,52,148/-. The annual return in form VAT R-2 was also submitted in time along with copy of trading account, profit and loss account and balance sheet. It had shown gross turnover of more than Rs.600/- lacs in a year. Its case was taken up in scrutiny by the revenue. However, notice in form N-2 which was statutory in making scrutiny assessment under Section 15(3) of the HVAT Act and CST Act was not issued to the appellant. The assessing officer vide order dated 29.03.2013 denied the claim of the appellant with regard to transfer of its stock to its branches and offices outside State of Haryana in a wrong manner and additional tax demand of Rs.34,23,021/- was created. The appellant-assessee filed appeals against the order dated 29.03.2013 passed by the assessing officer before the Joint Excise & Taxation Commissioner (Appeals) (for short “JETC (A)”) who vide order dated 16.04.2014 remitted the case to the assessing authority with direction to confront all the material which he was relying upon, to the appellant. Still feeling aggrieved, the appellant approached the Tribunal wherein the only

grievance raised was that the statutory VAT N-2 notice required to be served under Section 15(2) of the HVAT Act for initiating assessment proceedings in a scrutiny case was not served on the appellant. The Tribunal after considering the contentions raised by both the sides held that the service of VAT N-2 notice on the assessee was validly effected in accordance with Rule 79 of the Haryana Value Added Tax Rules, 2003 (for short "Rules, 2003") and accordingly, finding no merit in the appeals dismissed the same.

3. Feeling aggrieved, the appellant-assessee has filed the instant VAT appeals challenging the impugned order dated 17.04.2018 passed by the Tribunal.

4. The following questions of law had been posed for consideration:-

(i) Whether on the facts and in the circumstances of the case, the Tribunal and Authorities below were right in holding that notice N-2 was properly served to the appellant as per the provisions of order V of CPC read with rule 79 of HVAT Act?

(ii) Whether on the facts and in the circumstances of the case the service of notice N2 is valid if served to an unknown and unnamed person, who is neither the addressee nor his regular employee and nor a person authorized by the addressee?

(iii) Whether on the facts and in the circumstances of the case is the department right in sending subsequent notices without mentioning or referring to Notice N-2, which had already been allegedly served and without referring to the fact that none had

appeared in response to the notice N2?

5. It has been submitted by learned counsel for the appellant- assessee that the impugned order as passed by the Tribunal was liable to be set aside as the same was illegal and unsustainable in the eyes of law. The authorities below and the Tribunal had ignored the fact that the provisions of Rule 79 of Rules, 2003 had not been complied with and no notice in form VAT N-2 to initiate scrutiny proceedings was served upon the appellant as per law; that the authorities below had wrongly relied upon documents signed by some unknown person with regard to receipt of notice VAT N-2 and it was not proved that such notice was received by any regular employee or authorized person/agent of the appellant; the affidavit sworn by the Accountant of the appellant that no notice was received by him had also not been taken into consideration and further that in the subsequent notices issued against the appellant, there was no reference qua issuance of notice and serving of notice VAT N-2 upon the appellant. It was, therefore, urged that the proceedings for scrutiny assessment were not held validly and the same were liable to be declared *void ab initio*. With these broad arguments, it was submitted that the appeals deserved to be allowed. To fortify his argument, learned counsel for the appellant placed reliance upon authority cited as **Daya Ram and Company v. State of Haryana**, 2013 (60) VST 241, wherein the notice issued by revenue was received by a friend of the appellant. It was held by a Coordinate Bench of this Court that the notice had not been validly served upon the appellant and serving notice upon friend of the appellant did not fall within the array of the persons specified under Rule 79 (1) (a) of the Rules, 2003.

6. Learned counsel for the respondent, on the other hand, argued that there was sufficient material on record to prove that the notice VAT N-2 was duly served upon the assessee. The accountant of the appellant-assessee had made statement on 01.06.2017 before the Deputy Excise and Taxation Commissioner (for short "DETC") in this regard which was binding upon the appellant. Service of notice through gatekeeper of the appellant was valid service according to Rule 79 of the Rules, 2003. It was well proved from the assessment order dated 29.03.2013 that the appellant had put up appearance through its Accountant Sh. Rajeev Kumar before the assessing officer and was duly represented and even had produced documents. The assessing officer had passed order dated 29.03.2013 after considering the entire transaction between the assessee and its branch offices and had held it to be a clear cut case of interstate sales. The appellant had not challenged the observations so made before the Tribunal. The only grievance which was raised before the Tribunal had been duly considered by the latter and well reasoned findings had been given. No substantial questions of law had arisen in favour of the appellant. Therefore, it was argued that the appeals did not deserve to be allowed.

7. We have heard learned counsel for both the parties at length and have given due deliberations to the contentions raised by them. The assessing officer vide order dated 29.03.2013 had framed assessment under Section 15(3) of HVAT Act as well as CST Act to the tune of Rs.34,23,021/- by observing that the appellant-assessee was illegally claiming exemption from HVAT and CST by showing transactions between its sale offices and itself as branch transfers though they were interstate

sales and thereby demand of tax was evaded. Against this order, the appellant had filed appeal before JETC (A) on the grounds that no notice for rejection of branch transfer and converting the same into interstate sales was ever given and further that the assessing authority had erred in treating branch transfer as interstate sales. The JETC (A) had rejected the plea that notice in form N-2 was not issued to the assessee. However, with regard to the question that the transaction as made by the appellant was branch transfer or interstate sales, the matter had been remitted to the assessing authority with direction to confront all the material which he was relying upon to the appellant.

8. It is further revealed from record that before the Tribunal, the only grievance as made by the appellant was with regard to service of VAT N-2 notice for initiating assessment proceedings. The Tribunal had taken into consideration the fact that as on 01.06.2017, Sh. Rajeev Kumar, Accountant of the appellant had made a statement that there was valid service of VAT N-2 notice on the assessee through its gatekeeper. Perusal of the proceedings conducted by the assessing officer reveals that the above named Sh. Rajeev Kumar, Accountant had been putting up appearance before the assessing officer during the assessment proceedings. Of course, that was pursuant to the notice as issued by the assessing officer and not otherwise. On a perusal of the assessment order (Annexure A-1) it is clearly revealed that Sh. Rajeev Kumar had put up appearance before the assessing officer on 24.01.2013, 05.02.2013 and 20.02.2013. The assessment order was passed on 29.03.2013. In such circumstances, there cannot be stated to be any force in the argument as raised by the appellant that notice VAT N-2

had not been validly served upon it. The Tribunal had also taken note of the fact that the above named Sh. Rajeev Kumar had subsequently furnished an affidavit on 17.04.2018 swearing therein that his signatures on statement dated 01.06.2017 was obtained on blank papers. The Tribunal had rejected this plea and in our opinion rightly so in view of the fact that the affidavit so sworn by Sh. Rajiv Kumar was dated 17.04.2018 i.e. only on the day when the appeal by the Tribunal had been decided. The appellant being employer of the above said Sh. Rajeev Kumar can obviously be presumed to be in a dominating position to procure such affidavit. As such, we are inclined to hold that the Tribunal had rightly observed that the statement dated 01.06.2017 was actually made by Sh. Rajeev Kumar before the officers of department affirming that notice VAT N-2 was served upon the appellant through its gatekeeper. The appellant had failed to bring any such material on record to show that the service of notice VAT N-2 was not validly effected upon it. The facts of **Daya Ram and Company's** case (Supra) as relied upon by the appellant are distinguishable due to the reason that in the above cited case, the notice was served upon the friend of the assessee whereas in the present case, ample material had been produced on record by the respondent to show that the notice was served upon the appellant through gatekeeper of the premises of the company who was presumed to be a person regularly employed by the appellant in connection with its business and, therefore, fell within the ambit of Rule 79 (1) (a) of the Rules, 2003. Therefore, the above cited case does not help the appellant in the peculiar facts and circumstances of the case. Accordingly, it is held that no ground has been made out for accepting the plea of the appellant that the notice

VAT N-2 was not served upon it in accordance with law and, therefore, the contention raised by the appellant that in the subsequent notices, no reference as to service of previous notice VAT N-2 had been mentioned is also of no consequence. Consequently, it is held that no substantial question of law has arisen in favour of the appellant. Accordingly, finding no merit in the appeals, the same are dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

17.02.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No