IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **VATAP No.4 of 2019**
Date of decision: 09.01.2024

M/s Ambika Agri Products … Appellant

Versus

State of Haryana & ors. … Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Rajiv Sharma, Advocate,
for the appellant.

Mr. Sharan Sethi, Addl.A.G., Haryana.

G.S. SANDHAWALIA, J. (Oral)

1. Challenge in the present appeal is to the order dated 23.07.2018 passed by the Haryana Tax Tribunal, Chandigarh, whereby appeal filed by the said assessee under the Haryana Value Added Tax Act, 2003 (for short 'the HVAT Act') was dismissed by holding that the assessee did not file any response or reply to the show cause notice issued by the assessing authority pointing out the discrepancies and suppression of sales on both counts. It is pertinent to notice that the appeal filed under the Central Sales Tax Act, 1956 (for short 'the CST Act') was also dismissed by the said order and the VATAP No.8363 of 2018 has been dismissed by the Coordinate Bench on 06.12.2022 for the want of prosecution.

2. The Tribunal found that there was evidence that there was use of tracing paper as per the record of inspection shown by the State representative and there was suppression of the sales/stock difference during the physical verification. Therefore, the tax penalty had been rightly

levied under both the Acts and the assessee could not rebut the same in any manner. The only modification is that the correct penalty as such was assessed at Rs.5,51,895/-, whereas it had been earlier calculated at Rs.5,61,895/-, being three times of the tax amount of Rs.1,83,965/- while noting that under Section 38 of the HVAT Act, the penalty amount has been levied. Counsel has tried to convince that the proceedings were under Section 29 of the HVAT Act and therefore, the penalty could not have been imposed as such.

3. We have perused the paper book and the order as such passed by the Tribunal under Section 38 of the HVAT Act read with Section 9 (2) of the CST Act.

4. The order dated 05.05.2014 (Annexure A-1) would go on to show that inspection of the premises was done on 27.5.2013 under Section 29 of the HVAT Act. Thereafter, the file has been transferred and the notice has been issued to the present appellant. The show cause notice was also issued under Section 38 of the HVAT Act on 21.10.2013 and VAT N-3 the arguments thus, raised that the proceedings as such were under Section 29 of the HVAT Act, are without any substance.

5. Perusal of Rule 31 of the HVAT Rules, 2003 would go in to show that notice in the Form VAT-N3 has to be served to show cause. Rule 31 reads as under:-

> *"31. **Imposition of penalty:-** Where an assessee or any other person on whom a duty or a liability has been cast under the Act or these rules, commits an offence punishable under the Act the taxing authority competent to impose penalty shall serve on him a notice in form VAT-N3 specifying the offence and calling upon him to show cause by such date, ordinarily not less than ten days after the date*

> *of service of the notice, as may be fixed in that behalf, why a penalty should not be imposed upon him and shall decide the case after considering objections filed or submissions made, if any, before him."*

6. The said form gives the format of the penalty, which is proposed to be levied under Section 38 of the Act. It is after a proper due opportunity and the assessment having been done and thereafter penalty is levied under Section 38 of the HVAT Act, which is three times as per the requirement. The order dated 12.01.2016 (Annexure A-2), therefore, is apparently passed by the Joint Excise and Taxation Commissioner (Appeals), Faridabad, and the Tribunal has rightly dismissed the appeal as noticed above after recording the affirmed findings that the penalty under Section 38 of the HVAT Act has been levied. The question as such sought to be raised that proceedings were under Section 29 of of the HVAT Act is without any substance keeping in view that notice under Section 38 of the HVAT Act was issued and the assessee failed to respond to the same.

7. We do not find any substantial question of law arises for consideration in the peculiar facts and circumstances of the case. The appeal is dismissed being devoid of any merits.

(G.S. Sandhawalia)
Judge

09.01.2024
monika

(Lapita Banerji)
Judge

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