IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-133-2017 (O&M)
Date of Decision:- 03.07.2025

M/s Godrej Consumer Products Ltd. ....Appellant

Vs.

The State of Punjab and another ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. Sandeep Goyal, Advocate
for the appellant.

Mr. Saurabh Kapoor, Addl. Advocate General, Punjab,
for the respondents.

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SUDEEPTI SHARMA, J.

1. The present appeal is preferred under Section 68 of the Punjab Value Added Tax, 2005 (for short, 'PVAT Act') against the order dated 20.02.2017 (Annexure A-8) passed by Punjab Value Added Tax Tribunal (for short, 'Tribunal') in Appeal No.158 of 2016, vide which penalty to the tune of Rs.14,16,558 imposed under Section 51(7)(b) of the PVAT Act by the Designated Officer, Zirakpur, vide order dated 21.10.2015, has been confirmed.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that the appellant sent a consignment containing Nivea Cream to its branch office at Baddi, Himachal Pradesh through Truck bearing registration No.HP-30A-1255.

The truck reached at Information Collection Centre, Zirakpur, on 10.10.2015, transporting the consignment from Zirakpur to Baddi.

3. That on asking, driver of the vehicle produced Invoice-cum-Delivery Challan no.7000308003 and 7000308000 dated 09.10.2015 alongwith GR No.240501 dated 09.10.2015 showing the transaction as 'Stock Transfer' from Zirakpur to M/s Godrej Consumer Products Limited, District Solan, Himachal Pradesh, disclosing the description of goods as "Nivea Soft Cream" 25ML-Rs.49/-FRWEzee 1 Kg Jar P60, Qty in Pcs. 2,00,000, value per piece @ 0.01 with Gross turnover of Rs.2,600/-. Likewise same particulars were disclosed in another challan bearing No.7000308000 except quantity (39,999 Pcs.) and Gross amount Rs.519.99/-.

4. The said goods were covered vide Stock Transfer Notes dated 09.10.2015 for an amount of Rs.3119.99/- as the said goods were meant for sales promotion scheme to be given against purchase of Ezee detergent. Alongwith the Stock Transfer Note, Goods Receipt dated 09.10.2015 issued by Shree Balaji Transolutions Pvt. Ltd. was also accompanying the goods.

5. That accordingly to verify the genuineness of documents produced, goods were detained under Section 51(6)(a) of the PVAT conveying the discrepancies that "Goods are meant for trade covered with Invoice/Delivery Challan. Estimated price per unit and total estimated value of the goods seems negligible as compared to the value of goods. The genuineness of the produced documents is suspicious. Needs verification along with account books". Statement of the driver admitting the above

facts was recorded and notice to the appellant through driver of the vehicle was issued for 12.10.2015.

6. In response to the notice, on 13.10.2015, Shri K.C.Thakur, Assistant Manager of the firm, alongwith Advocate of the firm appeared. They were confronted with the facts of the case that value of goods is negligible as per the documents produced covering the goods. They admitted that the value of the goods is wrongly mentioned in the produced documents. Further, they admitted that actual value of the goods is Rs.47,24,980/-. And that purchase of the goods was done by the firm from M/s Nivea India (P) Ltd, Mumbai. The invoice of the above referred to business transaction (Invoice No.90043473 dated 25.09.2015) was submitted by him. Shri K.C.Thakur was confronted that as per the produced invoice, the value of a single unit of Nivea Soft Cream comes out to be Rs.19.68/-. Hence, the actual value of the goods is Rs.47,24,980/-, whereas, the value declared was Rs.3,119.99/-. Therefore, under declaration, the value of the goods was Rs.47,21,860/-. Shri K.C.Thakur failed to produce any account books from where the genuineness of the business transactions could be examined. After finding it a fit case of penalty, Detaining Officer forwarded the case file to the Excise and Taxation Officer, Zirakpur, for taking penal action under Section 51(7)(b) of the PVAT Act.

7. Thereafter, notice under Section 51(7)(b) of the PVAT Act was issued by Excise and Taxation Officer, ICC, Zirakpur, for appearance on 19.10.2015. On 16.10.2015, Shri K.C.Thakur, Assistant Manager of the firm along with Advocate of the firm appeared and requested for release of

goods against the bank guarantee. Goods were released against the bank guarantee of Rs.14,16,560/- and the case was adjourned for 20.10.2015. On 20.10.2015, Advocate of the firm appeared and confronted with the facts of the case, but he could not produce any account books to prove the genuineness of the business transaction. He submitted a written reply, in his defence. Judgment was reserved on 20.10.2015 and on 21.10.2015, it was released and penalty to the tune of Rs.14,16,558/- under Section 51(7)(b) of the PVAT Act was imposed.

8. The appellant filed an appeal under Section 62(1) of the PVAT Act against the penalty order dated 21.10.2015 under Section 51(7)(b) of the PVAT Act passed by the Excise and Taxation Officer-cum-Office Incharge, Information Collection Centre, Zirakpur, imposing the penalty of Rs.14,16,558/-. The same was dismissed by the Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation), Patiala, vide order dated 27.05.2016.

9. The appellant further filed appeal against the order dated 27.05.2016 passed by the Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation), Patiala, before the learned Tribunal and the learned Tribunal, vide order dated 20.02.2017, dismissed the appeal filed by the appellant. Hence, the present appeal.

<u>SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES</u>

10. Learned counsel for the appellant contends as under:-

(i) That the Excise and Taxation Officer has failed to appreciate the fact that the transaction in question is a stock transfer and, therefore, no tax of State of Punjab is involved in the present case. The goods, i.e. Nivea Cream were purchased against full rate of tax without 'C' Form and were further stock transferred by the appellant to its branch at Baddi. The said goods were to be given free of cost in a promotional scheme against Ezee detergent. Therefore, there was no attempt to evade tax on the part of the appellant.

(ii) That the goods were voluntarily reported at the Information Collection Centre, Zirakpur and in case there was any discrepancy or deficiency in the documents, the same could have been corrected. The purpose of the barrier is to keep check on the unaccounted transactions. Further that once the goods were reported at the barrier, the transaction was entered against the registration of the appellant and in case there was any issue with regard to valuation, the same could have been dealt with by the Assessing Authority.

(iii) That the proceedings under Section 51 are summary in nature and the issue with regard to the valuation or the nature of the transaction cannot be gone into by the Information Collection Centre authorities.

(iv) That without admitting, even if there was any discrepancy in the Stock Transfer Note with regard to valuation, then also penalty under Section 51 cannot be imposed, as for failure to issue invoice or use of false invoice, specific penalty has been provided in Section 57 of the Punjab VAT Act, which provides for penalty of Rs.2,000/- or double the amount of tax involved in the transaction, whichever is higher in case the person fails to issue invoice. In case a person issues false invoice or receives and uses an invoice knowing such invoice to be false, shall be liable to pay a penalty of Rs.5000/- or double the amount of tax involved, whichever is higher. Further, Section 60 provides for maximum penalty of Rs.10,000/- in cases which are not covered elsewhere. It is submitted that in any case, penalty under Section 51 cannot be imposed for the discrepancy pointed out by the Excise and Taxation Officer.

He, therefore, prays that the present appeal be allowed.

11. *Per contra*, learned counsel for the respondents argues on the lines of penalty order and contends that goods were not covered by proper and general documents, therefore, the penalty has rightly been imposed. He, therefore, prays that the present appeal be dismissed.

12. Vide order dated 12.07.2018, this Court framed the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the order of the Punjab VAT Tribunal is wrong and illegal insofar as it has upheld the penalty on the ground that appellant has wrongly mentioned the estimated value of goods ignoring the fact that such goods were to be used in the sales promotion and value of said goods does not carry any significance?

> *(ii) Whether on the facts and in the circumstances of the case, the Punjab VAT Tribunal was justified in upholding the penalty in a case of stock transfer on the ground of valuation where the goods have been voluntarily reported at ICC even though value of goods has no significance in the case of stock transfer?"*

13. We have heard learned counsel for the parties and perused the whole record of this case, which was called through the State counsel.

ANALYSIS OF RECORD

14. A perusal of the record shows that the goods were voluntarily reported at Information Collection Centre, Zirakpur, on 10.10.2015. Further, as per the record, the goods in question were purchased from M/s Nivea India (P) Ltd., Mumbai, against Invoice dated 25.09.2015 for an amount of Rs.47,24,980 against full rate of tax without using any 'C' Form, since the goods were not meant for further sale. The said goods (Nivea Cream) were meant for sales promotion scheme to be given against purchase of Ezee detergent. The appellant submitted a written reply explaining the same.

15. A perusal of the label, which is on record, shows that Nivea Soft Moisturiser worth Rs.49/- is written as free gift with Godrej Ezee Liquid Detergent. Further the goods in question (Nivea Cream) was sent as a 'Stock Transfer' from Zirakpur to M/s Godrej Consumer Products Limited, Baddi, District Solan, Himachal Pradesh, along with Stock Transfer Note dated 09.10.2015 for an amount of Rs.3,119.99 and along with the said Stock Transfer Note, Goods Receipt dated 09.10.2015 issued by Shree Balaji Transolutions Pvt. Ltd. A perusal of the Invoice-cum-Delivery

Challan shows that it is specifically written that "THIS IS ONLY A STOCK TRANSFER AGAINST 'F' FORM AND NOT A SALE". As per G.R, which is a part of record, the consigner in the present case is M/s Godrej Consumer Products Ltd., L/M Chamberpur (Punjab) and the consignee is M/s Godrej Consumer Products Ltd., Khatha Baddi (Himachal Pradesh).

16. Even in the grounds of appeal before the learned Tribunal, one of the grounds of the appellant was that the goods in question were purchased by the Head Office of the company by paying full rate of tax at Delhi and since the goods were meant for self use i.e. for sale promotion purposes, therefore, 'C' Form was not issued for this transaction. This shows that the appellant had paid full tax at Delhi and no tax of Punjab State was involved in the present transaction. This was the contention as well of the appellant before the learned Tribunal.

17. Before proceeding further, it would be appropriate to reproduce the relevant portion of the order dated 20.02.2017 passed by the learned Tribunal:-

> *"Section 2 (c) of the Punjab Value Added Tax Act reads as under:-*
>
> *The word business includes (i) any trade, commerce, manufacturing, adventure or concern whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues there from; and (ii) any transaction in connection with or ancillary or incidental to such trade, commerce, manufacture, adventure or concern.*

Thus, from the aforesaid definition as enacted in the Act, it can't be said that "Nivea Cream" purchased by the appellant company was not meant for the purpose or trade business or had no role in the business or trade. As such, the goods which had been brought by the appellant from Mumbai dealer to the State of Punjab and thereafter these were taken to Himachal Pradesh, the element of Punjab is tax involved.

Now coming to the value of stock transfers as produced by the appellant at the time of checking, it may be observed that the appellant produced stock invoices showing the value of 2,40,000 pieces as Rs.3119.99/- whereas the actual value of this quantity of Nivea Cream pieces, as per the invoice issued by M/s Nivea India Ltd. was Rs.41,34,375/-. Section 45 of the Punjab Value Added Tax Act mandates the requirements to be performed at the time of preparation of the delivery challan/stock transfer. Section 45(4) of the Act reads as under:-

Section 45(4) *Where the goods are transferred otherwise then by way of sale, the taxable or registered person shall in respect of the goods transferred or consigned by him or on his behalf, issue to the consignee a delivery challan in such manner and containing such particulars as may be prescribed.*

Rule 57 refers to the particulars and information to be mentioned in a delivery challan. This Rule reads as under:-

Rule 57 *Particulars and information to be mentioned in a delivery challan:-*

(1) A delivery challan for transfer of goods others than by way of sale, shall be issued from duly bound book, except when the challans are prepared on computer or any other electronic or mechanical device. It shall be atleast in triplicate. The first copy shall be for purchaser or consignee. The

second copy shall be for the transporter. The last copy shall be retained by the consignor. The serial number shall be printed by a mechanical process.

(2) A delivery challan shall contain the following particulars:-

(a) the words, "Delivery Challan" shall be prominently printed on the document.

(b) serial number of Form VAT-36 in case of interstate transaction.

(c) date of transfer of goods.

(d) name, address and registration number of the consignee.

(e) description of goods, weight, quantity, estimated price per unit and total estimated value of goods.

(f) mode of transportation of goods and details thereof.

(g) signature of the Consignor.

As per aforesaid Rule, the consignor was bound to mention the estimated price per unit and total estimated value of the goods. In common parlances the total estimated value of goods is the value of goods for which the same were purchased, but to the contrary, in the present case the consignor knowingfully well about the estimated price of the goods wrongly recorded the price as one paisa per unit and Rs.3119.99/- for all the 2,40,000 units. Such mention of the particulars amounts to complete violation of Rule 57 of the Rules. The violation of section 45 and Rule 57 of the Rules certainly attract penalty and make the documents accompanying the goods as invalid. If statue provides for compliance of certain Section or Rule in a certain manner at the time of performing certain Act, then the violation thereof against such Rules would certainly attract the penalty.

Having gone through the impugned orders passed by the authorities below, the same appear to be well founded and well reasoned. As such, do not call for any interference at my end.

Resultantly, this appeal, being devoid of any merit, is, hereby dismissed."

18. A perusal of the above referred to order shows that the learned Tribunal did not peruse the whole record of this case and totally ignored the documents, which clearly show that the transaction was stock transfer and not for sale. Further, the goods were voluntarily reported at Information Collection Centre, Zirakpur, and even the documents produced before the Detaining Officer does not show the intention to evade tax. The reply filed before the Excise and Taxation Officer, Information Collection Centre, Zirakpur, and the grounds of appeal before the learned Tribunal have been totally ignored by the learned Tribunal while passing the order dated 20.02.2017. A perusal of the whole record of the case shows that the Excise and Taxation Officer, Information Collection Centre, Zirakpur, while imposing the penalty under Section 51(7)(b) of the PVAT Act has behaved like an Assessing Officer. Even if the tax of the State of Punjab is involved, it would be at the time of sale of the aforementioned goods. Once full rate of tax has been paid by the Head Office of the company at Delhi and whole data of Information Collection Centre, Zirakpur, as a whole is available to the Assessing Authority at the time of framing assessment, the Detaining Officer has gone beyond its powers by imposing penalty under Section 51(7)(b) as per provisions of the PVAT Act. Intention to evade tax in the present case is not evident upon perusal of the whole record.

19. Substantial questions of law are thus answered in favour of the appellant and against the respondents. Impugned orders are clearly unsustainable.

20. In view of the above, we find merit in the present appeal and the same is **allowed**. Order dated 20.02.2017 passed by the learned Tribunal, along with the penalty order dated 21.10.2015, is accordingly set aside.

21. Pending application(s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

03.07.2025
Virender

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