**(2009) 03 P&H CK 0103**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

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| Deepak Radios Pvt. Ltd. | | APPELLANT |
| | Vs | |
| Union Territory of Chandigarh and Another | | RESPONDENT |

**Date of Decision:** March 18, 2009

**Acts Referred:**

- Punjab Value Added Tax Act, 2005 - Section 68

**Citation:** (2009) 23 VST 42

**Hon'ble Judges:** M.M. Kumar, J; H.S. Bhalla, J

**Bench:** Division Bench

**Judgement**

M.M. Kumar, J.

This order shall dispose of VATAP Nos. 56, 57 and 58 of 2008. The dealer-assessee has approached this Court by filing these appeals u/s 68(1) of the Punjab Value Added Tax Act, 2005 (as extended to the Union Territory of Chandigarh) (for brevity, "the Act") against the orders dated November 1, 2007 passed by the Value Added Tax Tribunal, Union Territory, Chandigarh (for brevity, "the Tribunal") in Appeal Nos. 96, 97 and 98 of 2007, in respect of the assessment years 2001-02, 2002-03 and 2003-04, respectively. The dealer-assessee has claimed that the following question of law would arise for determination of this Court:

Whether the VAT Tribunal was bound to take into consideration the declarations in form ST XXIIA produced before it, on or before the date of actual hearing of the case before it?

2. The brief facts of the case relevant for disposal of the controversy raised are that on April 5, 2005 a surprise inspection of the dealer-assessee was carried out by the team of the sales tax officials and certain documents were impounded for verification. The sales were recorded on separate sheets. Thereafter notices dated December 2005 ST14 were issued for the period 2001-02, 2002-03 and 2003-04. The

dealer-assessee had claimed that on the date of surprise inspection all goods had suffered sales tax at the first stage. However, it could not furnish any proof that on the sold goods tax has been paid presales. When notices ST-14 were issued, the dealer-assessee was directed to produce form ST XXIIA along with the copies of purchase bills to substantiate its claim. The dealer-assessee was given several opportunities to comply with the statutory requirement. Eventually, the Assessing Authority passed assessment orders dated August 20, 2006 by ignoring the claim made by the dealer-assessee and created additional demand of Rs. 1,46,968, Rs. 1,24,592 and Rs. 1,91,484 in respect of assessment years 2001-02, 2002-03 and 2003-04, respectively.

3. Feeling aggrieved by the orders dated August 20, 2006 passed by the Assessing Authority, the dealer-assessee filed separate appeals u/s 20 of the Punjab General Sales Tax Act, 1948 (for brevity, "the 1948 Act"), before the Deputy Excise and Taxation Commissioner, Chandigarh, who vide his orders dated March 19, 2007 dismissed the same by recording a finding that the dealer-assessee has been making a false claim for the purchase of tax-paid goods. Consequently, the dealer-assessee filed further appeals before the Tribunal on the ground that the additional demand was created by the Assessing Authority on the basis of non-submission of declaration in form ST-XXIII-A. The dealer-assessee also raised certain other arguments. The Tribunal, however, rejected the aforesaid arguments and dismissed the appeals of the dealer-assessee. The operative part of the order dated November 1, 2007, passed by the Tribunal in Appeal No. 96 of 2007, reads thus:

We have gone through Section 20 of the Punjab General Sales Tax Act, 1948 as extended to the Union Territory, Chandigarh and find that the appellant failed to file declaration in form ST-XXII-A as required under the Rules before the Assessing Authority and the Appellate Authority in spite of several opportunities allowed by both these authorities to do so. The Assessing Authority has therefore, rightly created additional demand of Rs. 1,91,484 under the PGST Act. We therefore, see no illegality in the orders of the Assessing Authority and the Deputy Excise and Taxation Commissioner and while upholding the same dismiss the present appeal having no merits.

4. Mr. K.L. Goyal, learned Counsel for the dealer-assessee has argued that a Division Bench of this Court in the case of Prestolite of India Limited v. State of Haryana [1988] 70 STC 198 has held that production of C and D forms, which entitle the dealer-assessee in that case, to claim concessional rate of tax was although mandatory but the provision was held to be directory in so far as the relevant documents could have been produced at any stage in the assessment proceedings. In other words, the submission made by Mr. Goyal is that the forms could have been submitted before the Assessing Authority, Commissioner, who is the first appellate authority, the Tribunal or before the High Court. He has also placed reliance on

another Division Bench judgment of this Court rendered in the case of Varsha Spinning Mills Ltd. v. State of Haryana AIR 1995 P&H 195 and judgment of the honourable Supreme Court in the case of State of Andhra Pradesh v. Hyderabad Asbestos Cement Production Ltd. [1994] 94 STC 410, in support of his aforesaid submission.

5. At the hearing today, Mr. Goyal has also produced photocopies and the original forms ST-XXII-A. We have taken on record photocopies of the forms ST-XXII-A as Mark "A (Colly)", which runs into 40 pages.

6. Mr. Rajesh Garg, learned Counsel for the respondents has, however, argued that when such a huge delay in producing form ST-XXII-A has been caused by the dealer-assessee then it leads to a legal inference that the dealer-assessee has been making excuses without actually possessing the documents. According to the learned Counsel the onus of proof should be heavier in such a situation and the documents of unimpeachable credibility have to be produced by the dealer-assessee in order to obtain the benefit. His argument precisely is that longer the delay heavier the onus of proof.

7. After hearing learned Counsel for the parties and perusing the paper books with their able assistance we deem it appropriate to first consider the provision of Section 5(1A) of the 1948 Act and Rule 29(xi) of the Punjab General Sales Tax Rules, 1949 (for brevity, "the Rules"), which read thus:

Section 5(1A) of the 1948 Act

5. Rate of tax.-(1)...

(1A) The State Government may by notification direct that in respect of such goods other than declared goods, and with effect from such date as may be specified in the notification, the tax under Sub-section (1) shall be levied at the first stage of sale thereof, and on the issue of such notification the tax on such goods shall be levied accordingly:

Provided that no sale of such goods at a subsequent stage shall be exempted from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the registered dealer, from whom the goods were purchased:

Explanation.-For the purpose of this sub-section, the first stage of sale in respect of any goods in relation to any class of dealers shall be such as may be specified by the State Government in the notification.

Rule 29(xi) of the Rules

Rule 29. In calculating his taxable turnover a registered dealer may deduct from his gross turnover,:

(i) to (x)...

(xi) the sale or purchase of goods which have already been subjected to tax u/s 5(1A) or Section 5(3), as the case may be:

Provided that the dealer produces copies of cash memos or bills prescribed under Rule 55A at the time of assessment or when called upon to do so, by notice, by the competent authority under the Act.

8. A conjoint perusal of Section 5(1A) of the 1948 Act and Rule 29(xi) of the Rules shows that in the hands of a seller no tax would be leviable if such goods were purchased from a registered dealer in the Union Territory of Chandigarh and were chargeable to tax at its first stage of sale. Such tax should have actually been paid at the time of purchase provided declaration in form ST XXIIA has been furnished. The honourable Supreme Court in the case of Hyderabad Asbestos Cement Production Ltd. [1994] 94 STC 410 has dealt with a piece of legislation, namely, Central Sales Tax (Registration and Turnover) Rules, 1957 (for brevity, "the 1957 Rules"). Rule 12(7) of the 1957 Rules required a dealer-assessee to furnish declaration in form "C" or form "F" in order to claim lower rate of tax. According to Sub-rule (7) of Rule 12 of the 1957 Rules, such declaration was required to be furnished to the prescribed authority up to the time of assessment by the first assessing authority. While interpreting the aforesaid provision in favour of the dealer-assessee, their Lordships observed that the words "the first assessing authority" in Sub-rule (7) of Rule 12 of the 1957 Rules would not mean in the context and scheme of the enactment that the appellate authorities did not have the power to receive form "C" in appeal and proceeded to observe as under : (page 421)
The aforesaid observations show that the mere use of the words ''the first assessing authority'' in Sub-rule (7) of Rule 12 cannot and does not mean, in the context and scheme of the enactments concerned herein, that the appellate authorities do not have the power to receive form C in appeal. This power can of course be exercised only where sufficient cause is shown by the dealer for not filing them up to the time of assessment before the first assessing authority. If in a given case, a dealer had obtained further time from the first assessing authority and yet failed to produce them before him, it is obvious that the appellate authority would adopt a stiffer standard in judging the sufficient cause shown by the dealer for not producing them earlier. It is necessary to reiterate that receipt of those forms in appeal cannot be a matter of course ; it should be allowed only where sufficient cause is established by the dealer for not producing them before the first assessing authority as contemplated by Rule 12(7). The requirement of the said sub-rule cannot be excluded from consideration by the appellate court, while judging the sufficiency of the cause shown. It must be remembered that that is the primary obligation of the dealer and his failure to abide by it must be properly explained. Insofar as the Sales Tax Appellate Tribunal under the Andhra Pradesh Act is concerned, it is governed by regulation 11(1) referred to hereinabove which again is nothing but a reiteration of

the very same power.

9. The case in hand is on an even better footing because in Section 5(1A) of the 1948 Act or Rule 29(xi) of the Rules the expression "the first assessing authority" has not been used. Instead, the words used in the proviso are "the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the registered dealer..." Therefore, there is no principle of law discernible from Section 5(1A) of the 1948 Act or Rule 29(xi) of the Rules confining production of beneficial documents by the dealer-assessee only before the Assessing Authority and that no such documents can be produced before the appellate authorities. The issue has also come up before a Division Bench of this Court in the case of Prestolite of India Limited [1988] 70 STC 198 wherein it has been held that production of such beneficial documents was mandatory for the grant of concessional rate of tax but the provision was directory in so far as the stage of their production is concerned. Such documents could be produced at any stage in the assessment proceedings. It means that such beneficial documents could be produced before the Assessing Authority, Commissioner, Tribunal or even the High Court. Therefore, the principle of law which is discernible from the aforesaid judgments is that the beneficial documents, which could not be produced before the assessing authority or the first appellate authority could have been produced before the Tribunal or even before the High Court. It is the production of the documents, which is mandatory, but not the stage at which such documents have been produced. However, the dealer-assessee has to furnish sufficient cause for late production of the beneficial documents. Therefore, the question of law is liable to be answered in favour of the dealer-assessee.

10. When the principles of law are applied to the facts of the instant appeals, it becomes evident that the Tribunal has refused to take into consideration the beneficial documents in form ST-XXII-A. Those documents have been ignored on the ground that the dealer-assessee had failed to produce those documents before the Assessing Authority or the Appellate Authority despite being granted repeated opportunities. The explanation tendered by the dealer-assessee for the delay has also not been considered to record a finding whether such a delay constitutes sufficient cause or it is malicious. The documents in original have been produced before us and photocopies of those documents have been taken on record of this case as Mark "A (Colly)". Moreover, the case of the dealer-assessee right from the day of filing the returns on April 30, 2002 for the last quarter of 2001-02, has consistently been that no tax is imposable upon it as it has sold the goods on which tax had been paid at the stage of first stage of sale.

11. As a sequel to the above discussion, while answering the question of law in favour of the dealer-assessee, we set aside the impugned orders of the Tribunal, dated November 1, 2007, and all other orders including the assessment orders raising the additional demand. The matter is remanded back to the Assessing

Authority with liberty to the dealer-assessee to produce form ST-XXII-A. If the dealer-assessee furnishes satisfactory explanation for delayed production of form ST-XXII-A and the documents are found to be genuine then the Assessing Authority shall grant the dealer-assessee the benefit of Section 5(1A) of the 1948 Act read with Rule 29(xi) of the Rules. We make it clear that if the documents are found to be fabricated then the Assessing Authority may saddle the dealer-assessee with penalty as per provision of the Act.

12. The appeals are disposed of in the above terms.