

(2012) 08 P&H CK 0284

High Court Of Punjab And Haryana At Chandigarh**Case No:** VATAP No. 55 of 2011 (O and M)

M/S J.M.K. Ispat (P) Ltd.

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Aug. 8, 2012**Acts Referred:**

- Punjab Value Added Tax Act, 2005 - Section 51(7)(C), 68

Citation: (2012) 168 PLR 581 : (2013) 3 RCR(Civil) 775 : (2012) 56 VST 64**Hon'ble Judges:** G.S. Sandhawalia, J; Ajay Kumar Mittal, J**Bench:** Division Bench**Advocate:** Kishan Singh Baghi, for the Appellant;**Final Decision:** Dismissed

Judgement

Ajay Kumar Mittal, J.

In this appeal filed by the assessee u/s 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act"), the following substantial questions of law are claimed:-

- Whether the order of Ld. Tribunal upholding the penalty order on assumptions and presumptions is sustainable in law?
- Whether the order of the Ld. Tribunal upholding the penalty order on the basis of an admission of the driver recorded under threat and pressure is sustainable in law in view of the law laid down by this Hon"ble High Court in the case of M/s Krish Pack Industries v. State of Punjab. (2006)28 P.H.T. 27?
- Whether penalty imposed u/s 51(7)(C) of Punjab Value Added Tax Act, 2005 treating the transaction as inter State sale has wrongly been upheld by the Ld. Tribunal, when according to the documents the transaction was an Intra State sale and the same has been accepted by the Assessing Authority while framing the assessment?

(iv) Whether penalty imposed u/s 51(7)(C) of Punjab Value Added Tax Act, 2005 treating the transaction as Inter State sale has wrongly been upheld by the Ld. Tribunal when the purchaser has paid tax under Punjab Value Added Tax Act, 2005 after taking delivery of goods?

(v) Whether it is lawful to impose penalty u/s 51(7)(C) of Punjab Value Added Tax Act, 2005 by changing the nature of transaction from Inter State to Inter State sale without making any inquiry from the alleged purchaser of outside the State?

(vi) Whether the penalty imposed u/s 51(7)(C) of Punjab Value Added Tax Act, 2005 by the inquiry officer without bringing on record the name and address of the alleged consignee of out side the State is sustainable in law?

(vii) Whether the Ld. Tribunal has wrongly upheld the penalty order?

(viii) Whether the order passed by the Tribunal is sustainable in law?

Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the assessee is running the business of resale of iron goods at Mandi Gobindgarh and purchased ERW pipes from M/s Luxmi Narain Pipes Pvt. Ltd., Mandi Gobindgarh and Angle from M/s Hanumant Iron Store, Mandi Gobindgarh for a sum of Rs. 2,34,292/- and Rs. 3,98,657/- against the invoices dated 24.7.1998 (Annexures A-1 and A-2) by paying VAT at the rate of 4%. The assessee sold the said ERW pipes and angels to M/s Madan Lal Bansal and Company, Bareta for a sum of Rs. 6,35,595/- vide invoice dated 24.7.2008 (Annexure A-3) by charging VAT amounting to Rs. 24,446/-. The said goods were sent through Truck No. HR-56B-1383 of Punjab Bihar Transport Company, Mandi Gobindgarh against GR No. 1282 dated 24.7.2008. On checking of the said truck on 25.7.2008, the driver of the vehicle produced the invoice and GR but the truck was ordered to be taken at ICC Chullarkalan. The checking officer asked the driver to appear in his office on 26.7.2008 at Bathinda where the statement of the driver was recorded to the effect that the goods were being taken to Kohlapur in Maharashtra. The assessee approached the detaining officer for the release of the goods and also produced account books to prove the genuineness of the documents vide letter dated 28.7.2008 (Annexure A-4). A notice u/s 51(7)(C) of the Act dated 28.7.2008 was issued to the appellant. On 11.8.2008, the appellant appeared and filed reply to the said notice before the detaining officer. A penalty of Rs. 3,17,797/- was imposed vide order dated 11.8.2008 (Annexure A-5). Against the said order, an appeal was preferred before the appellate authority who vide order dated 9.7.2009 (Annexure A-6) dismissed the appeal. Feeling aggrieved by the said order, the assessee filed further appeal before the Value Added Tax Tribunal (in short "the Tribunal"). The Tribunal vide order dated 21.1.2011 (Annexure A-9) upheld the penalty order and dismissed the appeal. Hence, the present appeal by the assessee.

2. The only question that arises from the aforesaid questions is, whether the Tribunal was justified in upholding the levy of penalty u/s 51(7)(C) of the Act holding

that there was an attempt to evade tax by the appellant-dealer.

3. Learned counsel for the appellant submitted that there was no attempt to evade the tax as the goods were sold to M/s Madan Lal Bansal and Company which was a firm within the State of Punjab at Bareta. It was further submitted that the relevant documents were available with the driver. However, the driver had erroneously made a statement before the authorities to the effect that he was not carrying full documents. On the basis of the judgment of this Court in *Krish Pack Industries v. State of Punjab*, (2006) 28 P.H.T. 27 (P&H) it was submitted that the penalty could not have been imposed only on the basis of admission of the driver.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal. The Tribunal had noticed certain facts. It was recorded that the route which was adopted by the appellant was not normal for movement of the goods from Mandi Gobindgarh to Bareta and on that basis, the genuineness of the transaction was suspected. In addition, it was observed that the driver had stated that the goods were being transported to Kohlapur in Maharashtra and not to Bareta. Moreover, the Director/employee of the appellant firm Mr. Surinder Gupta was accompanying the vehicle and there was no declaration at the ICC Moonak. Still further, the purchase documents were dated 24.7.2008 which could be prepared after the vehicle had been intercepted and were to be handed over by Mr. Surinder Gupta to the driver of the vehicle after crossing the Punjab Barrier. The consignee M/s Madan Lal Bansal and Company had registration at Mandi Gobindgarh from where the consignment had originated and no firm in the name of M/s Madan Lal Bansal and Company at Bareta existed. On cumulative effect of the aforesaid, it was held that the document were not genuine and proper. The aforesaid finding of the Tribunal could not be demonstrated to be perverse or erroneous in any manner. The appellant has failed to substantiate the transaction of sale in favour of M/s Madan Lal Bansal and Company at Bareta. In such a situation, the judgment relied upon by the learned counsel for the appellant in *Krish Pack Industries* case (*supra*) is of no assistance as in that case it was only on the basis of the statement of the driver therein that the penalty was sought to be imposed which is not the position here. 7. In view of the above, no question of law much less a substantial question of law arises in this appeal. Accordingly, the appeal being meritless is hereby dismissed.