

(2011) 04 P&H CK 0332

High Court Of Punjab And Haryana At Chandigarh

Case No: VATAP No. 30 of 2011 (O and M)

State of Punjab and Another

APPELLANT

Vs

Morinda Cooperative Sugar Mills
Ltd.

RESPONDENT

Date of Decision: April 21, 2011

Acts Referred:

- Punjab Value Added Tax Act, 2005 - Section 2(zg), 68

Citation: (2012) 47 VST 54

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Advocate: Piyush Kant Jain, A.A.G., Punjab, for the Appellant;

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the Revenue u/s 68 of the Punjab Value Added Tax Act, 2005 (for short, "the Act") against the order of the Punjab VAT Tribunal dated October 4, 2010 in Appeal (VAT) No. 124 of 2010, annexure A4, claiming following substantial questions of law :

- (a) Whether the differential amount received by the respondent from the Government is a valuable consideration and is covered under the definition of the words "sale price" as per section 2(zg) of the Punjab Value Added Tax Act, 2005 ?
- (b) Whether the respondent was required to pay tax on the sale of molasses on the differential amount which was received by it from the Government on behalf of the purchasers, i.e., distilleries ?
- (c) Whether the assessment order passed by designated officer charging tax on the differential amount received by the respondent from the Government on behalf of the purchasers is sustainable in law ?

The assessee is a taxable person under the provisions of the Act. During assessment of the VAT, the designated officer added subsidy paid by the State on the sale of molasses.

2. The plea of the assessee was that it was liable to pay VAT only on the sale price and not on the amount given by the State. The order of the assessment was upheld by the appellate authority but the Tribunal accepted the plea of the assessee and set aside the addition to the turnover beyond the sale price. It was held :

It is admitted fact that the appellant had shown the sale at a value for which invoices had been issued to the distilleries and charged tax and paid. No invoice admittedly had been issued for the differential price of molasses and then charged by the appellant merely because some price had been fixed by the Government for sale of molasses or appellant could otherwise also charge that price from the other distilleries or private people on sale made to them, it could not be compelled to pay tax on difference of the price for which it had sold molasses to distilleries on the directions and at rate fixed by the Government, if the price fixed by the Government for sale of molasses is to be taken as sale price, then the invoice for the remaining amount may have to be raised against the State and State may ultimately become liable to pay tax.

In the facts and circumstances of the case, we hold appellant is not liable to pay tax on the differential price. Order of the designated officer dated April 29, 2009 and that of the DETC is liable to be set aside.

3. We have heard learned counsel for the appellant.

4. The contention raised on behalf of the appellant is that in the profit and loss accounts, the assessee has shown receipt of amount from the State on account of sale of molasses in addition to the sale proceeds but no tax was paid on the differential price paid by the State as per policy of the State.

5. We are unable to accept the submission.

6. Charging provision under the Act provides for levy of VAT on the turnover. If the assessee had received any further amount in addition to sale proceeds, which is not part of the sale price, such amount could not be added to the turnover. The finding recorded by the Tribunal cannot, thus, be held to be erroneous.

7. No substantial question of law arises. The appeal is dismissed.