

(2013) 08 P&H CK 0553

In the Punjab And Haryana At Chandigarh

Case No : VATAP No"s. 135 (O and M) , 136, 137 and 138 of 2012

Gemi Motors India Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 66 VST 188

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : M.P. Devnath, for the Appellant;

Judgement

Bharat Bhushan Parsoon, J.—By this common order, we shall dispose of VAT Appeal Nos. 135, 136, 137 and 138 of 2012 as these have their genesis in orders of reassessment for the assessment years 2000-01 and 2001-02, which orders have been upheld up to the Haryana Tax Tribunal, Chandigarh (in short, "the Tribunal") vide consolidated order dated January 2, 2012, which order is under challenge in these four appeals. In VATAP Nos. 135 and 136 of 2012 imposition of penalty has been assailed, whereas through VATAP Nos. 137 and 138 of 2012, imposition of tax has been challenged. In these appeals, the appellant has proposed the following questions of law for consideration:

(i) Whether, in facts and circumstances of present case, the impugned order passed by the Haryana Tax Tribunal, Chandigarh, is erroneous, unjust, incorrect and unsustainable in law and fact?

(ii) Whether, in facts and circumstances of present case, the Haryana Tax Tribunal, Chandigarh, has correctly passed the order based on perverse and erroneous legal reasoning?

(iii) Whether, in facts and circumstances of present case, the Haryana Tax, Tribunal, Chandigarh, has correctly passed the present order by ignoring the principles of natural justice by relying on completely different set of facts which are not applicable to the instant matter?

(iv) Whether, in the facts and circumstances of the present case, the Haryana Tax Tribunal Chandigarh, has correctly passed the present order by relying completely on the findings of the previous assessment year (AY 2000-01) and without relying on findings with regard to the present assessment year (AY 2001-02)?

(v) Whether, in the facts and circumstances of present case, the Haryana Tax Tribunal, Chandigarh, has correctly passed the present order by holding that the impugned transaction is an inter-State sales when the conditions u/s 3 of the Central Sales Tax Act have not been satisfied?

(vi) Whether, in the facts and circumstances of present case, the Haryana Tax Tribunal, Chandigarh, has correctly passed the present order by holding that the impugned transaction is an inter-State sale when the Department has failed to show movement of goods from one State to another?

(vii) Whether, in the facts and circumstances of present case, the Haryana Tax Tribunal, Chandigarh, has correctly passed the present order by turning blind eye towards the documentary evidence and letters which clearly indicate that the DEPB licenses were transferred by the appellant to M/s. Sai Enterprises and further M/s. Sai Enterprises transferred the same to M/s. Honda Sael?

(viii) Whether, in the facts and circumstances of present case, the Haryana Tax Tribunal, Chandigarh, has correctly held that there has been no violation of natural justice when the learned Joint Commissioner in the order dated May 30, 2007 has not recorded any reason at all?

(ix) Whether, in the facts and circumstances of the present case, the Haryana Tax Tribunal, Chandigarh, was justified in rejecting the appeal and upholding the order of the Joint Commissioner without considering the fact that the order passed therein was based on no reason at all?

Facts of the case:

2. Before analysis of these proposed questions is made, it would be better to take stock of the facts.

3. The appellant-company located at Faridabad (Haryana) is engaged in manufacturing of electric motors. It was registered under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the State Act") during the relevant years. During the course of its exports, it had got Duty Entitlement Pass Book Licences (in short, "DEPB licences"). These DEPB licences were freely tradable and sale of such licences was treated as sales of goods in terms of the decision of the Supreme Court of Yashwantrao Chavan Overseas Vs. Commissioner of Sales Tax and Others, During the year 2000-01, gross turnover of the appellant had included turnover from the sale of DEPB licences to the tune of Rs. 6,04,59,157. This part of total turnover was claimed to have been earned from sales made to a registered dealer of Faridabad. Said registered dealer had made declaration in form S.T.-15 qua these sales. As sales turnover of DEFB licences was entitled to

be allowed as admissible deduction from the total turnover, such deduction was allowed in original assessment order of June 25, 2004 of the Deputy Excise and Taxation Commissioner, Faridabad (East)-cum-Assessing Authority.

4. Sometime later, the concerned Assessing Officer received a communication of July 7, 2005, from his counterpart of the neighbouring jurisdiction. It contained vital information qua the present appellant-assessee. On verification of the details given in the said letter, it was found that the dealer to whom sale of DEPB licences had allegedly been made in fact was a smokescreen, whereas in fact sales of the licences had been made to entities outside Haryana and thus these sales were not innocuous registered dealer (RD) sales but in fact were inter-State sales. Sequently, on availability of complete data and information which had been duly verified, proceedings for reassessment had been conducted joining the assessee therein. Ultimately reassessment orders for 2000-01 as also for 2001-02 were made by the Assessing Officer on March 30, 2006, wherein penalty proceedings for these years had also been started resulting in imposition of penalty against them. The appellant-assessee had challenged these reassessment orders but could not succeed in both the appeals, i.e., first time to the Joint Excise and Taxation Commissioner and second time to the Tribunal.

5. In the present appeal, the contention of the appellant is manifold. It is claimed that three DEPB licences were further sold by M/s. Sai Enterprises to M/s. Honda Siel Car India Limited, Sector 40-41, Noida (Gautam Budh Nagar) (hereinafter to be referred to as "Honda") and there was no bar to such subsequent sales. It is alleged that the appellant was not required to know as to who had actually paid the bank draft from the purchaser side. It is averred that as the appellant had received the bank draft from the purchaser, i.e., M/s. Sai Enterprises, which purchaser had confirmed the sale to the appellant, the benefit could not be denied to the appellant. It is also alleged that once the declaration in form S.T.-15 had been furnished by the purchaser, deduction could not be disallowed in the hands of the seller and burden of proof is on the Revenue to show that a particular transaction is taxable in the manner claimed by the authorities. Reference has been made to Union of India and others Vs. Garware Nylons Ltd. etc., and Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd., It is thus urged that without any evidence whatsoever to prove that the appellant had made inter-State sales of DEPB licences, the Assessing Authority had wrongly raised demand against the appellant. It is claimed further that the appellant was unnecessarily dragged into this controversy whereas no proceedings were initiated by the authorities against M/s. Sai Enterprises. It is thus asserted that sale of DEPB licences to M/s. Sai Enterprises was a local sale and proceedings against the appellant terming the sales as inter-State sales are totally misdirected.

6. The contention of the appellant further is that the reassessment proceedings are without jurisdiction, illegal and contrary to law when there is no evidence either to show that the licences were sold to entities outside the State of

Haryana. It is urged that transfer letters duly verified by a bank to sell these licences were made available by the appellant in the name of registered dealers in the State of Haryana and, thus, neither adverse inference could be drawn nor could bank drafts/banker's cheques received from other entities outside the State of Haryana used to raise an adverse inference against the appellant. It was urged that once requisite declaration in ST-15 forms had been given by the purchasing dealer and these forms had been produced during assessment proceedings before the Assessing Officer, benefit could not be denied to the appellant merely because some unverifiable mischievous information had become available to the Assessing Officer. It is vehemently contended that onus to prove that there was an inter-State sale is on the Department and not on the assessee. It is canvassed further that the said onus had not been discharged by the Department.

7. Continuing his arguments, learned counsel for the appellant has urged that the appellant was not associated with the reassessment proceedings and when there was nothing to connect the appellant with entities outside the State, connection with the appellant could not be presumed. It is urged that had the Assessing Officer made proper verification, he was not to miss intimation action against the local dealers to whom the sales had been made by the appellant.

8. Though, the appellant has taken various grounds in these appeals but no point other than those already mentioned, has been pressed at the Bar.

9. We have heard counsel for the appellant at length.

10. When these arguments of the appellant are examined on the canvass of facts and attending circumstances, it is found that the Assessing Officer had not only associated the appellant in the reassessment proceedings but had solicited even further information by way of a questionnaire as well. The appellant had been participating in such proceedings, is a matter of record. It has also been found that ignorance feigned by the appellant about traders outside the State has been proved to be wrong on facts.

11. The argument of the learned counsel for the appellant is that the sales made by it were backed by supply of S.T.-15 forms by the purchaser and the same had been accepted by the Assessing Officer in the original order of assessment and thus, their veracity was beyond challenge. *Siri Kant Harnam Dass Attar Chand Co. Vs. The Assessing Authority, and Others*, has been cited. This authority has no application to the facts of the case.

12. Fraud pollutes and vitiates everything coming in its way; effect of fraud is all pervasive. It takes into its fold transactions held even in hoary past. Fraud can be likened to curd, small portion of which has the propensity of turning even large quantities of milk into curd; sublimity and purity of milk with just a little input of curd, loses its existence and identity. Milk loses its identity and character and is turned into curd. Such is the sweep and potency of fraud.

13. Merely because fraudulent transactions were punctuated by statutory declarations in form S.T.-15 made by the vendees, such fraudulent transactions would not be accepted as genuine. Reason is simple When claim of the appellant of the sales to be registered dealer sales held within the State of Haryana, is defeated being fraudulent backing of such transactions with declaration in form S.T.-15 has to give way. The Tribunal had rightly noted this aspect of S.T.-15 forms in words, which are to the following effect:

10.... Once this conclusion is reached, disallowance of deduction in respect of claim of sales of DEPB made to M/s. Krishna Enterprises, notwithstanding furnishing of the statutory declaration in form S.T.-15, becomes a foregone conclusion because when the claim of the sale itself has been defeated, there is no question of the claim of deduction on furnishing of the declaration in respect of the said sale succeeding.

14. The plea of the appellant that there is no supporting evidence, to disbelieve and reject the registered dealer local sales allegedly made by the appellant and to turn those sales to inter-State sales, is again a misnomer. Not only the Assessing Officer, during reassessment proceedings, but even the first and the second appellate authorities have meticulously evaluated the entire facts and have come to a firm conclusion that sales of the DEPB licences made by the appellant during both assessment years, i.e., 2000-01 and 2001-02 are in fact inter-State sales, notwithstanding colour of RD sales having been given to such sales by the appellant. Even when reappraisal of the facts available on the paper book is made, result is no different.

15. To understand the controversy, what happened in the neighbouring areas of the appellant contemporaneously, is worthy of evaluation. If we go by the apparent text of the transaction made by the appellant, the position in the assessment year 2000-01 is as under:

16. In addition to the details given in the tabular form for the assessment year 2000-01, it is relevant to mention here that on August 1, 2000, a demand of Rs. 39,017 was raised vide debit note by M/s. Anuj Jain and Sons, (HUF) Delhi on M/s. Samsung Electronics India Ltd., Noida on account of service charges for arranging transfer of first four licences in the table as above. When the information given in the tabular form as above, is evaluated in this context, it transpires that value of these four licences was Rs. 1,30,35,637. Commission of M/s. Anuj Jain and Sons, Delhi in the shape of service charges turns out to be 0.30 per cent. It is, thus, clear that the service provider charged service charges for transfer of first four DEPB licences. So far as other two licences sold to M/s. Laxmi Enterprises, Delhi, are concerned, no particulars of service provider were supplied by the appellant.

17. It is relevant to mention here that the appellant had been revealing less and concealing more throughout the proceedings conducted by the taxation authorities. Relevant portion of order dated March 28, 2007 of the Joint

Commissioner (Appeals), Faridabad, for reference is appended as below:

During the appellate proceedings, this authority asked the appellant to produce the formal correspondences for inquiry quotation and presentation, purchase order, acceptance order along with terms and conditions sheet by the mode of ordinary registered post, e-mail/fax, couriered/by hand made by the appellant, being seller, and the alleged purchase, i.e., M/s. Krishna Enterprises regarding sale-purchase of the goods in question, but the appellant failed to produce the same for the reasons well-known to him.

18. Despite this order of the first appellate authority, the appellant could not prove its bona fides either before it or by production of relevant record before the Tribunal during proceedings of second appeal. No such attempt was made by the appellant.

19. The contention of the appellant, asserting genuineness of the sales made by it, was that its vendees were not having any restrictive covenant with it and thus could further freely sell the said licences to anyone. It is asserted that these were sold to M/s. Samsung Electronics India Ltd., Noida as also to M/s. Laxmi Enterprises, Delhi, during the assessment year 2000-01. In short, it is claimed that sale to outside Haryana dealers was made by its vendee M/s. Krishna Enterprises and not by the appellant directly. It is further claimed that in the assessment year 2001-02, sale was made by the appellant to M/s. Sai Industries, Faridabad, which in turn had made further sale to M/s. Honda Sael Cars India Limited, Noida, for which the appellant can neither be blamed nor taxed, taking the colour of sales made by it to be inter-State sales.

20. Evaluating the entire set of facts, in a bid to peep into the genuineness of these transactions as also to test veracity of dealings of the appellant, this court had asked the appellant to produce particulars of bank accounts of the relevant vendees but no headway could be made as the appellant had not only been entirely non-participative but had also been feigning ignorance about vital information and particulars qua such sales. To demonstrate this part, order dated March 4, 2013 passed by this court is reproduced as below:

Present: Mr. M.P. Devnath, Advocate, for the appellant.

The learned counsel for the appellant seeks time to produce the particulars of bank accounts of M/s. Krishna Enterprises and M/s. Laxmi Enterprises that the transaction amount of sale of DEPB was received by the said dealers directly from Samsung/Honda Sael.

List on April 8, 2013.

A copy of this order be placed on the file of each connected case.

Sd/- (Hemant Gupta) Judge

Sd/- (Ritu Bahri) Judge

March 04, 2013.

21. Despite the adjournments having been sought thereafter by counsel for the appellant, no compliance with orders of this court was made and instead finally counsel for the appellant had shown his inability to produce such record and did not produce the same.

22. The evidence available in the paper book reveals that during the assessment year 2000-01, following payments had been received by the appellant-firm through the banking channels:

23. In the assessment year 2000-01, the following payments were received by the appellant-firm:

24. It is abundantly clear that the appellant had not shown any sale having been made by it to those parties from whom it had received these payments. Conversely, no payment had been received from the dealers to whom the sales of licences were alleged to have been made by the appellant.

25. On perusal of the paper book, it becomes apparent that these sales were made by the appellant in fact directly to M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi in assessment year 2000-01 and to M/s. Honda Sael Cars India Limited, Noida in the assessment year 2001-02 and the purchasers shown in the original assessment order, viz., M/s. Krishna Enterprises for the assessment year 2000-01 and M/s. Sai Industries for the assessment year 2001-02 in fact were only names of traders which names were used as camouflage and subterfuge.

26. The plea of the appellant that M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi, were subsequent vendees of M/s. Krishna Enterprises, whereas M/s. Honda Sael Cars India Limited, Noida was also subsequent vendee of M/s. Sai Industries, Faridabad, is a proposition of no substance and merits rejection when the entire record has been evaluated.

27. In addition to the discussion already made, it would be appropriate to detail even further circumstances which conclusively show that the sales shown by the appellant as registered dealer sales made to local dealers in fact were sales made to dealers outside the State of Haryana and thus were not RD sales but were inter-State sales exigible to added taxation in terms of inter-State sales:

(i) No payment from M/s. Krishna Enterprises, Faridabad (purported purchaser of DEPB licence of the appellant for the year 2000-01) had been received in the account of the appellant;

(ii) Instead payment of sales of DEPB licences in fact, was received from M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi, in account of the appellant;

(iii) No payment is shown to have been made in terms of purported sale from the appellant to M/s. Krishna Enterprises for 2000-01 and to M/s. Sai Industries for

2001-02;

(iv) Entire stock of six such licences was lying dormant with the appellant. For the year 2000-01, value of these DEPB licences was Rs. 1,75,17,014. These were shown to have been sold to M/s. Krishna Enterprises for Rs. 1,90,93,545. This transaction carries an apparent profit of Rs. 15,76,531. By this analogy, if version of the appellant is taken to be correct, then on further sale by its vendee M/s. Krishna Enterprises, it was to adjust the amount of Rs. 15,76,531 and was to earn further profit, but strangely enough as per the case of the appellant, M/s. Krishna Enterprises is alleged to have made further second sale of the licences to M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi on the same price. It is highly unexpected that M/s. Krishna Enterprises sold the licences at its purchase price to the subsequent dealers.

Non-payment of even a penny to M/s. Krishna Enterprises for those alleged sales is a significant factor to conclude that M/s. Krishna Enterprises was introduced as a dummy entity;

(v) The Assessing Officer had noticed in the assessment order of October 3, 2005 (annexure A3) that proprietor of M/s. Krishna Enterprises was a man of little means and was not of sound financial position. In terms of business, it is highly improbable that the appellant could leave the goods of the value of more than Rs. 1.75 crores in its charge without getting even a single penny.

(vi) It was also noticed that M/s. Sai Industries, Faridabad, was not even in a position to purchase the licences nor it had any resources to make the payment.

(vii) Debit notes and ST-15 forms projected by the appellant to which much hype has further been given by the appellant were in fact fictitious documents created by the appellant in a bid to keep the inter-State sales transacted by it to be out of tax-net and had projected these documents to vouch for registered dealer sales which in fact had never been transacted and were non-existent.

When tested on the touchstone of this provision, it becomes evident that M/s. Sai Enterprises for the assessment year 2001-02 was only introduced as a smokescreen whereas in fact the sale was inter-State transaction and it was a case of fraud committed on the Revenue.

(viii) When the sale had been made to M/s. Honda Siel located in the Noida (U.P.) and it had paid the price for the goods purchased there, M/s. Sai Enterprises was having no concern. During the assessment proceedings, inquiries had also been made from M/s. Honda Siel who had confirmed that they had made payment directly to the appellant-seller. From the facts and circumstances when the artificial veil is lifted, it becomes evident that the contract of sale is between the appellant and M/s. Honda Siel Limited, Noida, for the year 2001-02. Delivery of the DEBP licences had met with payment directly from their own account clearly showing that delivery of the goods had not been made in the State of Haryana to the dealer as had been projected by the appellant.

The debit notes allegedly issued by M/s. Sai Enterprises local dealer suffer from the following defects:

- (i) This had not been properly signed;
- (ii) These are no documents recognized under rule 43 of the Act;
- (iii) Not signed properly.

Sequelly, it is evident that these debit notes were introduced to hide the actual inter-State transactions in a bid to avoid the payment of tax due to the revenue, i.e., the State of Haryana under the Central Act. It may also be noticed that the Assessing Officer vide assessment order dated October 3, 2005 had also noticed u/s 48 of the Act and section 9(2) of the Central Act for taking penalty action against the appellant. Consequently, the additional demand of Rs. 25,75,967 as raised against the appellant.

28. All the circumstances including the transactions conducted through banking channels reveal that the payments were made direct to the appellant by M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi (for the assessment year 2000-01) and M/s. Honda Siel Cars India Limited, Noida (for the assessment year 2001-02) who were located outside the State of Haryana. It is further clear that intermediaries, viz., M/s. Krishna Enterprises and M/s. Sai Industries for the year 2000-01 and 2001-02, respectively had been interpolated by the appellant merely as masks to cover up direct sales made by it with dealers outside the State of Haryana.

29. Even the plea that M/s. Krishna Enterprises, Faridabad (purported vendee of licences for the year 2000-01) had made subsequent sales to M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi, whereas M/s. Sai Industries, Faridabad (for the year 2001-02) had made such subsequent sales to M/s. Honda Siel Cars India Limited, Noida, has emerged from the appellant completely as an after-thought. It is a conceded fact that this stand is conspicuous by its absence in the assessment proceedings initially conducted against the appellant. It is apparent that when the appellant found itself in a very tight situation, this plea emerged from it in distress but it could not sustain the same. Rather, overwhelming documentary evidence even coming from the banking channels, as has already been discussed in details, militates against the claim of the appellant that these sales were genuinely made to registered dealers of Faridabad, notwithstanding the fact that no transaction of transfer (on consideration of sale) could be proved to have come to the appellant from these registered dealers of Faridabad much less through banking channels.

30. The appellant cannot hide its misdeeds because no action has been taken by the authorities against M/s. Krishna Enterprises and M/s. Sai Industries local dealers, as yet. No benefit can be derived by the appellant from this aspect when material and evidence against the appellant, is so overwhelming.

31. From the totality of facts, circumstances and discussion made earlier, it turns

out to be entirely an exercise based on evaluation, and appraisal of facts and circumstances wherein no point of law much less substantial arises for adjudication by this court. Sequelly, upholding the impugned order of the Tribunal, all the four appeals are dismissed in limine.

32. Before parting with this judgment, we would like to make some observations, as under.

33. It may be pointedly noticed that during the reassessment proceedings, the Assessing Officer had found large scale fraud by the appellant. Nonetheless, he confined himself to institution of penalty proceedings in terms of section 8 of the State Act and section 9(2) of the Central Act. When the entire factual matrix with attending circumstances unfolds itself, it turns out to be a case of cheating right from the very beginning in which the appellant had clearly contrived and confabulated with M/s. Samsung Electronics India Ltd., Noida and M/s. Laxmi Enterprises, Delhi as also with M/s. Honda Sael Cars India Limited, Noida, to give colour of registered dealer sales to the inter-State sales by using names of M/s. Krishna Enterprises and M/s. Sai Industries, Faridabad as a subterfuge in defrauding and cheating the revenue. It is also clear that documents such as debit notes and ST-15 forms were contrived as valuable securities when these documents in fact were not even backed by the transactions which these documents projected to be representing. Thus, it is a case of forging of documents to represent non-existent fraudulent transactions, whereas actual transactions were different and distinct from these purported sales and in fact had nowhere been depicted in such documents. To generate concomitant faith and complete compliance with the benevolent legislations as also with schemes of the State and of the Centre from the trade, the taxation authorities may, if deemed proper, consider even moving under penal laws against such planners, conspirators and players of fraudulent transactions so that faith, confidence and trust which the Governments place on trade, expecting reciprocity from it, is not shaken any further and genuine traders do not feel neglected and lost.