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**Court : Punjab and Haryana**

**Decided On : Jul-16-2014**

**Appellant : “7. from the Perusal of the Above It Would Be Clear That**

**Respondent : .....**

**Judgement :**

CWP No.8689 of 2002 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.8689 of 2002 (O&M) Date of decision:

16. 7.2014 Merino Panel Products Limited Petitioner Vs. The Sales Tax Tribunal II, Haryana and another .. Respondents CORAM: HONBLE MR. JUSTICE AJAY KUMAR MITTAL HONBLE MR. JUSTICE JASPAL SINGH Present: Mr. Sandeep Goyal, Advocate for the petitioner. Ms. Tanisha Peshawaria, DAG Haryana. Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.8689 and 10940 of 2002, as according to the learned counsel for the parties, the issue involved in both the petitions is common. However, the facts are being extracted from CWP No.8689 of 2002.

2. Prayer in CWP No.8689 of 2002 filed under Articles 226/227 of the Constitution of India is for issuance of a writ of GURBAX SINGH201408.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 2 mandamus to quash the order dated 19.5.2001, Annexure P.13 passed by the respondent Excise and Taxation Officer and for cancellation of

penalty upheld by the Sales Tax Tribunal, vide order dated 14.1.2002, Annexure P.18.

3. A few facts relevant for the decision of the controversy involved, as narrated in CWP No.8689 of 2002 may be noticed. The petitioner is a dealer registered under the provisions of the Haryana General Sales Tax Act, 1973 (in short, the HGST Act.) as well as Central Sales Tax Act, 1956 (in short, the CST Act.). It is engaged in the business of manufacturing of laminated sheets. It is maintaining regular books of account and other relevant record. The petitioner has many imported plants and machinery which are repaired in India during the normal course of wear and tear. Press moulds/S.S.plates being the same thing made of stainless steel are also the capital goods under the head of plant and machinery which are used to give particular finish to the laminates and need repolishing after use in the press. This work is also done by SESA MSF Pvt. Limited, Neemrana, Rajasthan (M/s Sesa., in short). The petitioner imported press moulds/S.S.plates from various foreign companies. On 27.4.2001, the petitioner company sent certain goods for the purpose of repair to M/s Sesa. For this purpose, the petitioner issued challan, Annexure P.1 as provided under the Central Excise Rules, 2002. The value of the GURBAX SINGH201408.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 3 goods was estimated to be ` 12 lacs. The petitioner was supplied Form ST-18-A, Annexure P.2 issued by Government of Rajasthan to M/S Sesa as provided under the provisions of Rajasthan Sales Tax Act, 1994. The petitioner itself also issued Form ST38 Annexure P.3 prescribed under Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules.) by the Government of Haryana. All these three papers were accompanying the goods when these were sent for necessary repair etc. to M/s Sesa on 27.4.2001. After repair when these goods were in transport, the Excise and Taxation officer, checked the vehicle and the goods on 17.5.2001 at 3.30 PM and detained the same on the ground that ST38 form produced was blank and the goods were not covered with genuine and proper documents as required under Section 37(2) of the Act. After the goods were detained vide notice, dated 17.5.2001, Annexure P.7, the petitioner companys representative appeared before the authority and produced copies of documents showing the import of the material regarding plant and machinery, purchase order

and commercial invoice. After examining the matter, the Excise and Taxation Officer (ETO) imposed penalty of ` 3,60,000/- vide order dated 19.5.2001, Annexure P.13. Aggrieved by the order, the petitioner filed appeal before the Joint Excise and Taxation Commissioner(A). Vide order dated 27.8.2001, Annexure P.17, the appeal was dismissed and the order of the ETO was upheld. The GURBAX SINGH201408.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 4 petitioner filed further appeal before the Tribunal. Vide order dated 14.1.2002, Annexure P.18, impugned herein, the appeal was partly allowed, reducing the penalty from ` 3,60,000/- to ` 1,80,000/-. It was observed that though the petitioner was an exempted unit, yet the requirement of carrying a duly filled ST38form was binding. Hence the present petition by the petitioner.

4. Learned counsel for the petitioner submitted that the petitioner unit was exempted from payment of tax under section 13B of the HGST Act and therefore, there was no attempt to evade tax under section 37(6) of the Act. The original Form ST-38 which was to be filled by the consignee dealer of Haryana before sending it to Rajsthan was inadvertently missed as all the information was with the said dealer. It was urged that there was no mens rea on the part of the petitioner to evade tax in view of judgments of this Court in Delhi Assam Roadways Corporation Ltd. Vs. State of Haryana and another, (2001) 123 STC272and M/s Crown Gaskets (India) Bahadurgarh vs. Assistant Excise and Taxation Commissioner, Bahadurgarh, (2003) 22 PHT413 There being no attempt to evade tax,penalty sustained by the Tribunal was uncalled for.

5. On the other hand, learned counsel for the State supported the order passed by the Tribunal.

6. After hearing learned counsel for the parties, we find GURBAX SINGH201408.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 5 merit in the contentions of learned counsel for the petitioner.

7. This Court in M/s Crown Gaskets (India)s case (supra) while dealing with identical issue had recorded as under:-

7. From the perusal of the above, it would be clear that the Sales Tax Tribunal has found it as a fact that the purchases and sales made by the petitioner were not leviable to tax under the Haryana General Sales Tax Act, 1973 and that at the time when the goods were detained, the petitioner had requested the officer detaining the goods to verify the documents with the material in all respects before the release of the goods and that the presumption could be rebutted by the person concerned by producing evidence to prove that the allegations contained in the notice were incorrect and that infact no attempt to evade the tax had been made. The Tribunal itself having found that the purchases and sales made by the petitioner were not leviable to tax under the Act, in our opinion, there would be no occasion to say that there was any attempt to evade the tax due under the Act. As referred to above under section 37(6) of the Act, penalty could be imposed only if after inquiry the officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods, a penalty of not less than fifteen percent and not more than thirty percent of the value of the goods and in case, he finds otherwise, he shall order the release of the goods. If the sales and purchases made by the petitioner were not leviable to tax under the provisions of the GURBAX SINGH Act, it could not be said that there had been any attempt 2014.08.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 6 to evade the tax due under the Act. That being so, there would be no question of imposing penalty, even minimum penalty, on the petitioner merely because at the time of checking required documents were not with the truck driver. This is especially so when it is found by the Sales Tax Tribunal itself that the petitioner had requested the officer detaining the goods to verify the documents with the material in all respects before the release of the goods. Under these circumstances in our opinion, the respondents were not authorized to impose any penalty upon the petitioner. On the other hand, the respondents were duty bound to release the goods without imposition of any penalty. The authority Delhi Assam Roadways Corporation Limited Hisar v. State of Haryana, (2001) 17 PHT418(P&H) = (2001) 123 STC273(P&H) relied upon by the learned counsel for the respondents in our opinion would have no application to the facts of the present case. Non production of challan duly filled in before an officer checking the goods may be a sufficient

reason to believe that the person transporting the goods was attempting to evade the tax due under the Act but that would be only in those cases, where tax is leviable under the provisions of the Act. However, where the sales and purchases were not leviable to tax under the provisions of the Act (as found in this case by the Sales Tax Tribunal), it could not be said that the person transporting the goods was attempting to evade the tax due under the Act. This is especially so when as laid down in the Delhi Assam Roadways Corporation Limited Hisar v. State of GURBAX SINGH Haryana, (2001) 17 PHT418= (2001) 123 STC2732014.08.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.8689 of 2002 (O&M) 7 (P&H) the presumption can be rebutted by the person concerned by producing evidence to prove that no attempt had been made to evade payment of tax. Thus, the law laid down by this Court in Delhi Assam Roadways Corporation Limited Hisar vs. State of Haryana (2001) 17 PHT418(P&H) would have no application to the facts of the present case.. 8. A perusal of the aforesaid clearly shows that where there was no liability to pay tax under the Act, there would be no occasion to infer that there was any attempt to evade tax under the Act. In the present case, it was not controverted that the petitioner was an exempted unit. Though there was a technical defect in not producing Form ST-38 but there was no attempt to evade tax. Once that was so, sustaining of penalty under Section 37(6) of the Act by the Tribunal was unjustified.

9. Accordingly, the writ petitions are allowed. The penalty imposed against the petitioners is set aside. (Ajay Kumar Mittal) Judge July 16, 2014 (Jaspal Singh) gs Judge GURBAX SINGH201408.06 13:29 I attest to the accuracy and integrity of this document High Court Chandigarh

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