

**BEFORE JUSTICE A.N.JINDAL, CHAIRMAN, VALUE ADDED TAX,
TRIBUNAL, PUNJAB, CHANDIGARH.**

**Appeal No. 289 of 2016
Decided on 17-3-2017**

M/s Katyal and Co.,
C-8, Focal Point,
Jalandhar.

Versus

The State of Punjab.

**Present:- Mr. Varun Chadha, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Deputy Advocate General for the State.**

ORDER

The Assistant Excise and Taxation Commissioner, Mobile Wing, Fazilka vide his order dated 29.9.2014 imposed a penalty to the tune of Rs.2,56,400/- against the appellant U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005. The appeal filed by the appellant was dismissed by the Deputy Excise and Taxation Commissioner (A), Ferozpur Division, Headquarter at Bathinda on 20.1.2016.

The appellant is a manufacturer of Casting Goods, Forging and Steel Parts and is registered under the Punjab Value Added Tax Act, 2005 as well as the Central Sales Tax Act, 1956.

On 31.8.2014, the driver, while carrying the iron goods in vehicle bearing No. PB-04L-9849, was intercepted by the Excise and Taxation Officer, Mobile Wing, Fazilka. On demand, he produced the following documents:-

- a) Invoice No.162 dated 29.8.2014 issued by M/s Katyal and company, Jalandhar in favour of M/s Standard Blex (I) Pvt. Ltd., Vadodara (Gujrat) for Rs.5,12,639/- (incl. Taxes) for commodity 'Iron & Steel' goods.
- b) GR Nc.10182 of M/s Batala Bombay Roadlines for consignment listed at (a) above



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- c) Retail Invoice No.0001547 dated 28.8.2014 issued by M/s Jagatjit Inds Ltd., Kapurthala for Rs.5,56,990/- for commodity 'Barley Malt'
- d) GR No.551 of M/s Hamira Road Carriers covering consignment listed at (c) above.
- e) VAT-XXXVI/e-ICC form No.ICC14ST010756418 for commodity 'Barley Malt'

Having reasons to believe that the consignment of Invoice No.162 pertaining to Katyal and company, Jalandhar was not covered by e-ICC form, therefore, he forwarded the case to the Designated Officer who also issued notice U/s 51 (6) (b) of the Act to the owner of the goods. Ultimately, the Designated Officer while observing that the consignor adopted the abnormal approach while sending the goods without requisite information submitted on line and he also did not seek any help of the department if there was any problem in sending the information, therefore, he was liable to pay the penalty, and accordingly he was imposed penalty to the tune of Rs.2,56,400/- U/s 51 (7) (c) of the Act. The appeal filed by the appellant was dismissed.

The counsel for the appellant, in order to assail the findings returned by the authorities below, has argued that there was no concealment of goods and the goods were covered by the proper and genuine documents. The Excise duty and the tax under Central Sales Tax Act, 1956 were duly charged on the bill and as such, in no circumstances, the transaction could have been kept out of the books of account. The appellant being a manufacturer was bound to declare the goods i.e. "Iron and Steel" as he was entitled to refund of the tax paid on the purchase of raw material, made within the State of Punjab in case of its sale in the course of interstate trade and commerce as per Section 15 of the Central sales Tax Act, 1956, therefore, the appellant was entitled to refund of tax paid within the State on the purchase of declared goods. In case he makes any interstate sale, then, there was no reason to keep the transaction out of the

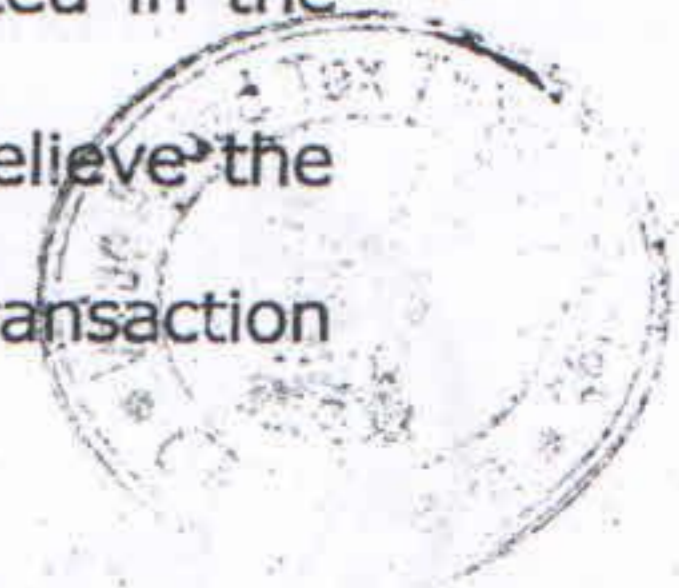


account books. It has been next contended that the sine-qua non for imposition of penalty was the proof of mensera to evade the tax. In this case, the goods were excise and Central Sales Tax paid and he was to receive the MODVAT therefore, there was no intention to avoid generation of e-ICC, but it could not be generated only for the fault of the server. Eventually, he prayed for acceptance of appeal.

To the contrary, the State Counsel has submitted that since the appellant did not generate the information through e-ICC, therefore, the violation of Rule 64-B of the Act certainly attracts the penalty provisions.

Having heard the rival contentions and having gone through the record of the case, it is revealed that the goods under transaction were being taken out of the State under the VAT invoices. The goods were voluntarily reported at the ICC. The excise duty @ 12%, education cess @ 2%, S & H Edu. Cess @ 1% and CST @ 2% had been duly charged. The sale being interstate, in no manner, the element of Punjab Tax was involved. Further more, the goods under transactions were accompanying the documents as prescribed u/s 51 of the Act, 2005. The e-ICC regarding the other transactions, which was being carried in the same truck has been generated one day earlier to the transaction in question, establishes the bonafides of the appellant and also proves some justification in the plea setup by the appellant that the e-ICC qua this transaction could not be generated due to the fault of the server. When the appellant had generated the e-ICC for one transaction, then in the normal circumstances, there was no difficulty for him to generate the e-ICC qua the second transaction. The first transaction is dated 28.8.2014 for which information was generated and the second transaction is dated 29.8.2014, for which information could not be generated. Had the transactions taken place on the same day, then the information regarding both the transactions would have been generated in the normal course of events. In these circumstances, it is difficult to disbelieve the appellant when he disclosed that the information qua the second transaction

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could not be generated due to the fault in the server. Even otherwise, since no the Punjab tax was involved therefore, there was no occasion to conclude that the appellant wanted to evade the tax, secondly, since the goods were being sold under "C" forms after duly charging the excise duty, education cess and Central Sales Tax, therefore, there was no reason to keep the goods out of account books. Consequently, the plea setup by the appellant that information could not be generated due to fault in the server would have to be accepted.

Similar view was taken in case of Parabolic Drugs Limited, Dera Bassi Vs State of Punjab (2015) 51 PHT 282 (PVT), wherein it was observed as under:-

"The case of the department is that the e-information regarding bill No.31 dated 29.9.2011 was intentionally not given with a view to evade the tax. There is no gain saying the fact that the consignment sale in question was transferred otherwise by way of sale by means of form "F". If it is so, in no manner, the element of Punjab Tax was involved. Furthermore, the goods under transaction were accompanying the documents as prescribed U/s 51 of the Act, 2005. It is an admitted case that e-ICC Information regarding invoice No.32 had been furnished. If, there would have been mala fide intention, the information in relation to the last bill No.32 would have been avoided for the obvious reason that once the information in respect of invoice No.32 was given then by no stretch of imagination, invoice No.31 could be kept out of books of account. In view of the verification report submitted by the Excise and Taxation officer, ICC Jharmari also the Penalizing Officer was not justified in imposing the penalty in question."

The authorities below have not taken into consideration the aforesaid facts and circumstances of the case, therefore, the orders passed by them need interference.

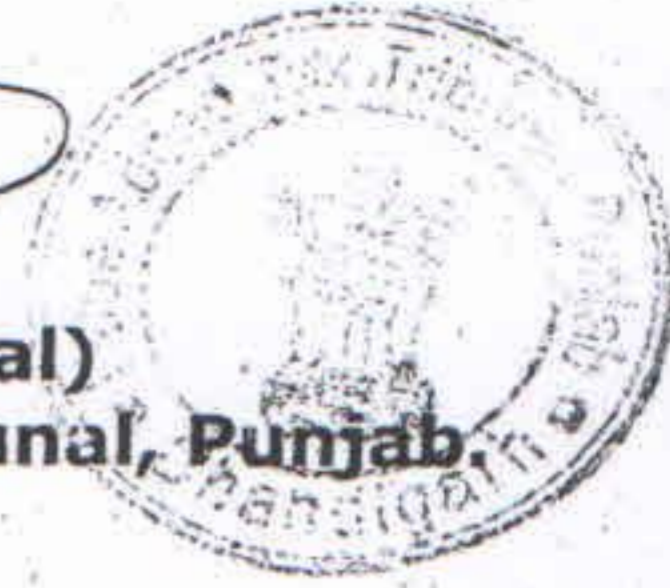


Resultantly, this appeal is accepted, impugned order is set-aside and the order of penalty is quashed.

Pronounced in the open court.

Chandigarh, dated the:
17th March, 2017

(Justice A.N.Jindal)
Chairman, VAT Tribunal, Punjab



Note: Whether fit for Reporting Yes

'RR'

Attested to be true copy.
28-3-17
Supt. (Judicial)
Value Added Tax Tribunal
Punjab, Chandigarh.
Indian Evidence Act 1872
Under Section 76

28/3/17

no. VAT/URK/2017/835

CHD NJ. 28-3-17

To

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