



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on : 01.08.2024

Date of Decision : 28.08.2024

1. VATAP No. 61 of 2014 (O&M)

M/s Simran Medical Agencies ... Appellant
Versus
The Union Territory of Chandigarh and another ... Respondents

2. VATAP No. 89 of 2014 (O&M)

Cap Tab Biotech ... Appellant
Versus
The Union Territory of Chandigarh and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Sandeep Goyal, Advocate and
Mr. Rishab Singla, Advocate, for the appellant(s).

Mr. Ajay Jagga, Additional Standing counsel with
Mr. Daljeet Singh, Advocate, for the respondent - UT
Chandigarh (in VATAP-61-2014)

Mr. Sumit Jain, Senior Standing Counsel with
Mr. Rohit Kaushik, Panel Counsel for respondent No.1 - UT
Chandigarh (in VATAP-89-2014)

Mr. Sourabh Goel, Senior Standing Counsel with
Ms. Geetika Sharma, Advocate and
Ms. Anju Bansal, Advocate, for respondent No.2
(in VATAP-89-2014).

SANJEEV PRAKASH SHARMA, J.

These appeals have been admitted by this Court on 27.04.2015
on the following substantial questions of law:-

*"(i) Whether on the facts and in the circumstances of
the case, the learned Tribunal was justified in upholding
the penalty imposed under Section 51(7)(b) for the goods
being imported to Chandigarh from Himachal Pradesh*



on the ground of undervaluation merely on the basis of provisions for levy of excise duty on MRP basis under Central Excise Act?

(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty levied on road side checking under Section 51(7)(b) even though the determination of actual valuation of goods is within the domain of the assessing authority?"

2. For adjudication of the aforesaid questions, it would be apposite to quote Section 51 (7)(a)(b) of the Punjab VAT Act 2005 (hereinafter to be referred as “the Act of 2005”), which reads as under:-

“51. Establishment of information collection centres or check posts and inspection of goods in transit:-

(7) (a). The officer detaining the goods under sub-section (6), shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person Incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within the period of seventy-two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alongwith the concerned records to the designated officer for conducting necessary enquiry in the matter;

(b) The designated officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty per cent of the value of the goods.



In case he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings;”

3. Somewhat similar provisions under Section 14-B (6) and (7) of the Punjab General Sales Tax Act, 1948 (for short, ‘the 1948 Act’) as amended in 1974 were challenged on the ground of being *ultra vires* and the issue was taken up by a Five Judges Bench of this Court in **Mool Chand Chuni Lal vs Manmohan Singh and another** 1977 PLR 456. For understanding the similarities between the two provisions, we quote sub-sections 6 and 7 of Section 14 of the 1948 Act, which read as under:-

“(6) If the officer incharge of the check post or barrier or other officer as mentioned in sub-section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, order the unloading and detention of the goods, for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person incharge of the goods, vehicle or vessel on behalf of the owner of the goods furnishing to his satisfaction a security or executing a bond with or without sureties for securing the amount of tax, in the prescribed form and manner, for an amount not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater:

Provided that where any goods are detained a report shall be made immediately and in any case within twenty-four hours of the detention of the goods by the officer detaining the goods to the Excise and Taxation Officer of the district seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and when so required, and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted.

(7) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel and shall require him to produce proper and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceedings along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give, him an opportunity of being heard and if, after the enquiry. such 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 not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater, and in case he finds otherwise he shall order the release of the goods”.

4. The relevant extract from the judgment of Full Bench of this Court in **Mool Chand Chuni Lal** (supra) are quoted as under:-



“4. It will be noticed at once that Section 14-B (6), as it stood originally, provided for the seizure of any goods not covered by documents and Section 14-B(8) provided for the seizure of all goods in respect of which the declaration was false. The seizure might be made irrespective of the question whether there was any attempt to evade tax. The basic but unwarranted assumption underlying both the provisions for seizure, as in the case before the Supreme Court, was that the goods were transported after sale within the State. Again, as in the case before the Supreme Court, no attempt was made to specify what goods might be seized. The provisions were considered by Bal Raj Tuli, J., and the Division Bench to fail within the principles laid down in K. P. Abdulla's case (supra). But the position is quite different now. The new provision for the levy of penalty [Amended Section 14-B(7)] is no longer based on any assumption that the goods were transported after sale within the State. Its present basis is the attempt to evade tax and it prescribes a condition precedent to the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. It cannot possibly be disputed that the prevention of evasion of sales-tax is a power incidental or ancillary to the levy of Sales-tax and falls within Entry 54 of List II of Schedule VII of the Constitution. Section 14-B(7), which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax due under the Act, cannot, therefore, be held to be without constitutional sanction. It is further to be noticed that the goods which are to be detained are also specified in Section 14-B(6) as goods meant for trade and not covered by proper and genuine documents.



5. xxx xxx xxx

6. *While Section 14-B(8), as it stood originally, provided for the payment of the tax recoverable and a penalty, present Section 14-B(7) does not provide for recovery of the tax but provides for the imposition of penalty which is calculated not on the basis of the tax payable but on the basis of the value of the goods. The present provision is clearly outside the rule laid down in Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others, (supra). It cannot for a moment be pretended that there can be no attempt to evade the tax due under the Act before the liability to pay the tax has arisen. A scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device, is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted. In our view, there is no repugnancy between the provision for levy of penalty under Section 14-B(7) when an attempt to evade the tax is discovered and the general scheme of the Act which provides for the levy of tax at the point of first sale within the State.”*

5. In **Xcell Automation vs Government of Punjab** (2007) 5 VST 308, a Division Bench of this Court having noticed the Full Bench judgment of this court in **Mool Chand Chuni Lal** (supra) took into consideration the law laid down by Hon’ble the Supreme Court in **Sodhi Transport Co. vs State of U.P.** (1986) 62 STC 381 (SC); **Delite Carriers (Regd.) vs State of Haryana** (1990) 77 STC 170 (SC); and also considered the judgment in



Commissioner of Sales Tax vs P.T. Enterprises (2000) 117 STC 315 (SC); which followed the Supreme Court judgment in *Check Post Officer vs K. P. Abdulla and Brothers* AIR 1971 SC 792.

6. In *State of Haryana vs Sant Lal* (1993) 4 SCC 380 the provisions of Section 38 of Haryana General Sales Tax Act, 1973 were held to be unconstitutional. The said provision requires every clearing and forwarding agent or person transporting goods to furnish information in respect of consignments to the assessing authority. It was held that presumption of evasion of tax could not be raised against such an agent.

7. In *Tripura Goods Transport Association vs Commissioner of Taxes* AIR 1999 SC 719, the Supreme Court upheld the rules requiring transporters to obtain certificate of registration and to maintain accounts and also made declaration in prescribed form as per the provisions, which were incidental to evasion of tax.

8. In *A.B.C. (India) Limited vs State of Assam* (2005) 142 STC 88 (SC) similar provisions in Sections 42 and 44 of the Assam General Sales Tax Act, 1993 were also upheld following the earlier judgments.

9. The Division Bench of this Court in *Xcell Automation* (supra) after considering the entire laws and judgments passed by the Supreme Court from time to time summed up the position as under:-

“(1) Exercise of power at the check-post to be valid, should have reasonable nexus with the attempt at evasion.

(2) Straight-jacket approach is not called for and each instance of exercise of power has to be seen in the



light of individual facts. Neither exercise of power can be restricted, wherever required for checking attempt at evasion nor can be extended to areas where there was no attempt at evasion.

(3) In an appropriate case, the writ court may examine the exercise of power and interfere if exercise of power is found to be arbitrary, mala fide and without nexus with attempt at evasion on the face of it.

(4) If there are disputed questions and there is reasonable nexus of exercise of power with attempt at evasion, writ petition against imposition of penalty at the check-post cannot be entertained.

(5) Where relevant documents are duly produced but a bona fide plea against taxability is raised and there is neither mis-declaration nor concealment, exercise of power of imposing penalty at the check- post on the ground of attempt at evasion may not be called for.

In the present case, contention raised by the assessee that the "cast iron castings" carried by it were not "cast iron" liable to tax at the first stage, could not be held to be requiring no adjudication or frivolous or mala fide. It is not relevant as to what is the interpretation finally taken on this subject and we do not express any conclusive opinion at this stage but having not concealed any information, having furnished all the information, having placed reliance on the judgments of the honourable Supreme Court and since the matter did require serious consideration, adjudication by the check-post officer was not called for. Invocation of jurisdiction for imposing penalty on the allegation of attempt at tax evasion in such a situation was not permissible."



10. In the present case, the appellant was duly registered under the Punjab VAT Act 2005 (as applicable to UT Chandigarh) and engaged in purchase and distribution of medicines. It purchased two types of medicines, namely, QMOL and MG from M/s R. K. Laboratories Private Limited, Nalagarh, for further selling to various distributors in Chandigarh. The goods were in transit from Hiamchal Pradesh to Chandigarh when the same were checked at Chandigarh. The driver produced the requisite invoice amounting to Rs. 1,83,214/- including GST. The Checking Officer, however, found that the MRP on the medicines QMOL was Rs. 180/-, as printed, while on the invoice the price was shown to be Rs. 19/-. Similarly, MRP for the medicine MG was printed as Rs. 140/-, while the price mentioned on the invoice was Rs. 18/-. The goods were, therefore, detained under Section 51(6)(a) of the Act of 2005 for verification and show cause notice was issued to the appellant to explain the purchase prices of medicines mentioned in the invoice and not the sale price. VAT was chargeable in the hands of the appellants when the sale of the above mentioned goods were to be made. The AETC did not find the reply satisfactory and imposed penalty under Section 51(7)(b) of the Act of 2005 holding that the purchasing goods at lesser rates with the attempt to evade the tax payable to U. T. Chandigarh as the goods would be sold at much lesser rates than the value of the goods. It was held that according to the percentage fixed by the Central Excise Department, the excise duty would amount to Rs. 5,50,200/- and abatement of 35% was calculated on the MRP fixing the price of the goods. Thus, under valuation of goods amounting to Rs. 3,66,986/- was assumed and a penalty of Rs. 1,10,096 was imposed. The First Appellate Authority vide its order dated 21.03.2012 upheld the penalty. The VAT Tribunal dismissed the



further appeal vide its order dated 16.12.2013. Hence, the present VAT Appeal before this Court.

11. Learned counsel for the appellants submitted that the sales tax can be imposed only when the sale is made in future and the price is the basis for measuring tax and not on the basis of presumptions.

12. Learned counsel for the appellants further submitted that the actual determination of value of goods is in the domain of the assessing officer and the checking officer could not have done the valuation of the goods on the road side. There was no concealment by the appellants nor there is any *mens rea* on the part of the appellant to evade the tax. The price mentioned in the invoices was the price as fixed by the manufacturer and was the cost/ purchase price for the appellant at his level. Therefore, there could not be any occasion for evasion of tax. No sale has been made at Chandigarh. The goods were purchased against C-form from the consigner at Baddi, who had duly charged the GST @ 2%. Since the imposition of excise tax exempted in the State of Himachal Pradesh, presumption cannot be drawn on the said basis.

13. Learned counsel for the appellants has also relied on Division Bench judgment of this Court in CWP No. 1576 of 2002 – *Gujarat Ambuja Cements Limited and others vs the State of Haryana* decided on 30.08.2007, to submit that tax applies only when the actual sale occurs. He has also relied on *State of Rajasthan and another vs Rajasthan Chemists Association* (2006) 6 SCC 773, where a similar issue arose and the Supreme Court held that the tax was to be based on actual sale and not on the anticipated future sales.



14. Learned counsel for the respondents have relied on the judgment in **Mool Chand Chuni Lal** (supra) and also on the judgment passed by Allahabad High Court in **M/s Radha Fragrance vs Union of India and 4 others** 2023 (97) GST 1015. The Allahabad High Court held that if there is a gross under valuation of goods, the conclusion can be drawn that the goods were under valued to evade tax.

15. Learned counsel for the respondents have supported the order passed by the authorities and submitted that the Assistant Commissioner of Excise & Taxation had calculated the value of the goods in the present case in the manner as rational as possible for him by relating it to the percentage of MRP discounted by the Central Excise Department for payment of excise duty. The purchase price was disproportionately low as compared to MRP and the action of the respondents, therefore, was in accordance with the law.

16. We have considered the submissions.

17. We also find that the issue raised in the present petition stands finally adjudicated by the Supreme Court in **Rajasthan Chemists Association** (supra), wherein it was held as under:-

“41. The principal contention about the invalidating of the basis of the measure of tax envisaged under Section 4-A of the Act as inserted vide the Finance Act, 2004 is that while it levies taxes on the sale transaction carried on by the manufacturer or wholesalers or distributor the measure with which total turnover is to be determined is not part of the sale which attracts tax but its premise is to be found on subsequent sale which, under the scheme of single point tax is not excisable to tax at all. MRP which a wholesaler can



charge in respect of scheduled formulations too is fixed by the Control Order. In respect of scheduled formulations the wholesaler is required to leave at least 16% margin in MRP for the retailers and he is entitled to retain not more than 8% profit on the purchase price. There being statutory prohibition against the wholesalers to charge MRP from their buyers, the maximum retail price fixed on the packet has no rational connection with the taxable sale effected by the wholesalers and which becomes the subject-matter of charge as a first point tax. In such event, there exists no nexus between the measure of levy and subject of levy.

44. *In the context of the meaning assigned to the expression "sale of goods" or price or consideration element of such "sale of goods" as taxable event, the conclusion that can fairly be reached is that for the taxing event of sale, if the price is to be the basis for measuring tax, it must relate to actual transaction of sale that becomes the subject of tax and not to a different transaction that may take place in future at a price."*

18. We find that the invoices have been issued by the manufacturer, who is placed in Himachal Pradesh where the excise duty is exempted. In the circumstances, the valuation of goods i.e. purchase price for any person would be comparatively much lower than that of other places where excise duty is payable. It is also not a case of the State authorities that the invoices were different for the appellant in comparison to other distributors. Once there is no finding in this regard, a presumption cannot be drawn that the invoices were under valued merely because MRP rate mentioned on the product was on a much higher side. So far as the dealer is concerned, namely the appellants, they would further sell the goods to various distributors. If



the sale price is comparatively low, the case of tax evasion would arise. Further it is to be noticed that the price of a medicine is not necessary on the basis of the MRP as purchased by the retailer which is on two stages ahead as the dealer would sell the product to a distributor, who would further sell it to a wholeseller and subsequently from whole seller the product will be further transferred to the retailer. Each stakeholder would keep their own margin of profit. Thus, to presume that there is an evasion of tax at the level of the person who is a dealer going to further sell the goods to a distributor, is a farfetched presumption. The action of the respondents imposing penalty on such a presumption would be an exercise of arbitrary power. Accordingly, the question no. 1 is answered in favour of the appellants.

19. The Division Bench of this Court in *Xcell Automation* (supra), has also answered the aforesaid question in favour of the assessee. The invocation of jurisdiction on allegations of attempt of tax evasion is without sufficient reasons and the order is totally laconic.

20. The question no. 2, as framed above, relates to the penalty imposed by invoking Section 51(7) (a) and (b) of the Act of 2005. However, such power of imposing penalty was not required to be invoked at the stage of road side checking and the power can only be exercised by the assessing authority who shall reach to the conclusion that there has been an attempt to evade tax after actual valuation of the goods. The judgment in *Sant Lal* (supra) would, therefore, hold field for the present purpose. Question is, therefore, answered accordingly.



21. Having discussed and reached to the conclusion relating to question nos. 1 and 2, as above, we, therefore, conclude in favour of the assessee.

22. Accordingly, the impugned orders in both the appeals dated 16.12.2013 are quashed and set aside. The appeals are allowed.

23. All pending applications shall stand disposed of.

24. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

28.08.2024
VS

(SANJAY VASHISHT)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No