



VATAP-326 of 2018 (O&M)

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

**VATAP-326 of 2018 (O&M)
Date of Decision:- 06.06.2025**

M/s Pee Pee MarketingAppellant

vs.

State of Punjab and ors. ...Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Joginder Singh Jaswal, Advocate,
for the appellant.

Mr. Saurabh Kapoor, Addl. A.G. Punjab
for the respondents-State.

SUDEEPTI SHARMA, J.

C.M. No. 4283-CII-2025

The applicant-appellant has filed the present application under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908, for addition of “*M/s Essel Agro Pvt Ltd through Sh. Varinder Kumar Tagra, Senior Vice President*” as proforma respondent.

Present appeal has been filed for setting aside order dated 22.05.2017 passed by learned VAT, Tribunal, Punjab, Chandigarh. At this belated stage, learned counsel for the appellant is unable to point out any ground to implead the said entity as party to the appeal. Therefore, the application for addition of “*M/s Essel Agro Pvt Ltd through Sh. Varinder Kumar Tagra, Senior Vice President*” as proforma respondent, is



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dismissed.

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1. The present appeal is preferred under Section 68 of Punjab Value Added Tax Act, 2005 (for short 'Act 2005'), against order dated 22.05.2017 passed by the Punjab Value Added Tax Tribunal in Appeal No. 625 of 2013.

BRIEF FACTS OF THE CASE

2. On 18.9.2005 at about 10.00 A.M., the driver while loading Antenna Systems (Electronic goods) in vehicle No.PB-08P-2595 reached the Information Collection Centre (ICC) Shamboo Import, District Patiala and produced the following documents before the Excise and Taxation Officer on duty:-

(i) Retail invoice No.1033 dated the 17.9.2005 issued by M/s Essel Agro (P) Ltd. Lawrence Road, New Delhi for the supply of 1000 pieces of Antenna Systems, in favour of the above dealer for Rs. 24,90,000/- and

(ii) GR No. 822-002742 dated the 17.9.2005 issued by M/s GIR Movers (P) Ltd. New Delhi for transportation of the above goods from Delhi to Jalandhar.

3. The goods were to be unloaded at the godown of the appellant located at Village Hazara situated at Hoshiarpur Road, Jalandhar. On examination of the invoice, it was found mentioned that the goods were sent against "F" Form to be supplied against refundable security deposit for installation at customer premises against rent and not



for sale. The Designated Officer observed that though no price was indicated on challan but it was approximately Rs.24,90,000/-, Accordingly, he suspected the genuineness of the documents and transaction itself, and also suspected it to be a case of tax evasion. He also recorded the statement of the driver and detained the goods U/s 51 (6) (a) of the Punjab Value Added Tax Act for necessary verification.

4. Subsequently, notice was issued to owner of the goods through driver of the vehicle to appear on 22.09.2005 at 11 A.M along with books of account and any other evidence to prove the genuineness of documents and transactions but none appeared on its behalf on 20.9.2005. The case was then forwarded by detaining officer to Designated Officer (Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu at Mehmampur (Import), District Patiala), who also issued notice to the owner of goods to appear on 26.9.2005 along with relevant books of account and any other evidence. However, on 22.9.2005, Sh. Parveen Jaswal proprietor of the consignee firm (appellant) and Sh. Varinder Kumar Tagra a representative of the consignor firm appeared before him and they were apprised of the reason for detention of the goods. They did not produce books of accounts nor submitted any other evidence. Sh. Parveen Jaswal, proprietor, submitted written explanation stating therein that consignee firm was authorised agent of the consignor and the goods were consigned as a result of e-mail order dated 14.9.2005. The e-mail

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order revealed that consignee had sent a sum of Rs. 30,97,000/- as advance for supply of one thousand units of the Antenna systems. Sh. Parveen Jaswal, proprietor, further deposed that the goods were received as branch transfer for installation by the consignees at customers' premises against refundable security and charging of rent and the goods were not meant for sale. It was also submitted that the goods had to remain the property of the company and after completion of five years, the customer could return the goods and receive back the security deposited by him. The local distributor was to pay local taxes on lease rents. Sh. Parveen Jaswal further submitted that he was the owner of the goods being consigned to him. Further that the Antenna systems were meant for DTH connections. The cost of each disc was Rs.2490 and the same was to be provided to customers on right to use basis after being installed at the premises of the customers against monthly rent of Rs.500/- for a period of 5 years from date of installation. He further submitted that he was maintaining the account books and depositing the VAT in the govt. Treasury. Further the other Rs.400/- were charged as security for the viewing card. However, VAT was charged on rental amount of Rs.500/- only.

5. After thorough examination of the case, the Assessing Authority, vide his order dated 23.9.2005, concluded that goods worth Rs. 24,90,000/- were actually to be sold and the tax due to State of Punjab would be evaded. And the documents covering the goods were



found to be not genuine and proper. Accordingly, the Assessing Authority imposed a penalty of Rs.7,47,000/- under Section 51 (7) (b) of the Act, 2005, vide order dated 23.09.2005.

6. The appellant preferred an appeal against order dated 23.09.2005 before Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation) Patiala Division, Patiala, who vide order dated 05.07.2013 dismissed the appeal of appellant by concluding that full amount is to be charged as a price and transfer is actually sale at full value.

7. Thereafter, against the above order dated 05.07.2013 passed by Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation) Patiala Division, Patiala, the appellant preferred an appeal bearing No. 625 of 2013 before the Value Added Tax Tribunal, Punjab Chandigarh and the same was dismissed, vide order dated 22.05.2017. Hence the present appeal.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

8.1 Learned counsel for the appellant contended that penalty to the tune of Rs.7,47,000/- under Section 51 (7) (b) of the Act, 2005 was wrongly imposed upon the appellant. He further contends that the goods were not meant for sale but were supplied by the consignor to be further supplied to the customers against refundable security deposit for installation of the Antenna systems at customers premises against rent and not for sale and the goods were sent against "F" Forms as it was a stock transfer.



8.2. He submits that on receipt of the goods, the appellant used to deliver the same to their dealers in Punjab on right to use basis and such dealer used to deliver the same to ultimate subscribers on right to use basis. At the time of delivery of the systems to the dealers, he used to issue rent invoices after charging tax to such dealers for five years and also used to charge VAT under the Punjab Value Added Tax Act, 2005. The said VAT was used to be collected by the appellant from dealers in Punjab and deposited in the State ex-chequer. He further submits that learned Tribunal did not appreciate this fact while passing impugned order dated 22.05.2017 upholding the penalty order dated 23.09.2005.

9. Per contra, learned counsel for respondents-State contends that supply was made after taking an advance of Rs.30,97,000/- pursuant to email dated 14.09.2005 and the goods could not be described as stock transfer since the value of goods was received in advance by the consignors. Therefore, the transaction was a sale for all intents and purposes.

ANALYSIS AND CONCLUSION

10. Heard learned counsel for the parties and perused the whole record of this case.

11. Vide order dated 15.02.2019, present appeal was admitted for consideration of following substantial questions of law:-

- (i) *Whether ETO was competent to impound the Goods loaded vehicle when the vehicle Driver had complied with the*



provisions of the VAT Act, sec 51 (2), & (4)) and voluntarily submitted valid document i.e. invoice no-1033 dated 17.09.2005 and Form 'F'?

ii. Whether ETO was competent to detain the goods & refer the case to AETC without recording the reasons in writing as required vide Punjab VAT Act Section 51(6) (a).

iii. Whether in the facts & circumstance of the case, tax/penalty can be levied without there being any documentary evidence against Appellant?

iv. Competence of the AETC to impose penalty on the Appellant Consignee, Who had not prepared the documents that allegedly were not genuine and proper, who was not the owner of the detained goods and to whom no benefit was to accrue even if there was any alleged evasion of tax.

v. Competence of AETC to hold juridical proceeding against the Consignee the Appellant rather than the Consignor M/s Essel Agro Pvt. Ltd.?

vi. Whether in the facts and circumstance of the case, the issue follows the parameters of provision of Revision under Section 34 of Act when it could at best be tried under section 17 related to Reassessment as the issues were not even part of the assessment order, under revision, and are dehorn the record?

vii. Whether in the fact and circumstance of the case, the liability



faster follows the parameters of definition of "Sales"?

viii. Whether in the facts and circumstance of the case, Sales tax can be levied on mere assumption or personal knowledge of banking system, without there being any transfer of property in goods.”

12. Before proceeding further, it would be relevant to reproduce definition of ‘Sale’ under Section 2 (zf) of the Punjab Value Added Tax Act, 2005, Section 6 A of Central Sales Tax Act, 1956 and Rule 12 (5) of Central Sales Tax (Registration & Turnover) Rules, 1957:-

2(zf) the Punjab Value Added Tax Act, 2005

“Sale” with all its grammatical or cognate expressions means any transfer of property in goods for cash, deferred payment or other valuable consideration and includes -

(i) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) delivery of goods on hire-purchase or any system of payment by instalments;

(iv) transfer of the right to use any goods for any

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purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and

(vii) every disposal of goods referred to in Explanation (4) to sub section of this section;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply to a person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Section 6 A of Central Sales Tax Act, 1956

[6A. Burden of proof, etc., in case of transfer of goods claimed

***otherwise than by way of sale.--***

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods, and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale].

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3),] be deemed for the purpose of this Act to have been



occasioned otherwise than as a result of sale.

Explanation.--In this section, "assessing authority", in relation to dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

[(3) Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State.

Rule 12 (5) of Central Sales Tax (Registration & Turnover) Rules, 1957:- The declaration referred to sub-section (1) of Section 6-A, shall be in Form 'F',

13. A perusal of the record shows that 1000 Antenna systems worth Rs.24,90,000/- were being supplied to the appellant as Branch Transfer. Appellant failed to produce any documentary evidence to prove the transaction to be Branch Transfer. Further Form 'F' was to be issued by the transferee which was not issued. Further, the purchaser had transferred Rs.30,97,000/- against order placed via email on 14.09.2005 for supply of 1000 Antenna System unit. Since the purchaser had made advance payment as consideration of purchase of 1000 Antenna System unit, therefore, the transaction was sale for all purposes, as per definition of sale referred to above. Further the consignees were to install these systems at the premises of customers after charging a security of



Rs.2,890/- from them. Out of this security amount, Rs.2,490/- was described to be for Antenna Systems and the other Rs.400/- for the viewing card and amount is not refundable within five years from the date of installation. Even after the expiry of five year's period, the security would not be refunded, in case the Antenna Systems may not be found to be in working condition. There is no provision in the agreement for repair during the use of goods, atmospheric wear and tear or the otherwise depreciation of the material. Thus no effective control of property remains with original owner of the goods i.e. appellant, while these may be in use by the customer. Therefore, the amount charged as security would accordingly constitute 'sale price' exigible to tax. There is further condition that in case the goods may not be returned after five years, it would become the property of the customer, which is correctly held to be a novel method of tax evasion. Goods are provided to the customers after describing the charges of Rs.2,890/- to be security. This amount would remain with the supplier, because logically after such a long time of five years, the goods would not remain in running conditions for obvious reasons. Rent of Rs 500/- for five years period is being charged and VAT on this lease money was payable. Appellant did not even furnish any proof of payment of rent by the customers and further deposit of tax on the amount and to substantiate any of his other versions. Thus, the learned Tribunal correctly held that the goods in question worth Rs.24, 90,000/- are to be actually sold in a manner that



tax due to the State of Punjab would be evaded. Accordingly the documents covering the goods were not genuine and proper.

17. In view of the facts as referred to above, we find that the penalty has rightly been imposed upon the appellant and accordingly, the substantial questions law as referred to above are answered against the appellant and in favour of the revenue.

18. Appeal is dismissed being devoid of any merit.

19. All the pending application (s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.06.2025

Gaurav Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No