

VATAP-137-2017 (O&M)

2025:PHHC:075310-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-137-2017 (O&M)

Date of decision: 27.05.2025

M/S. GAGANDEEP STEEL INDUSTRIES Appellant(s)
Versus

STATE OF PUNJAB AND OTHERS Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN

Argued by: Mr. Kashmiri Lal Goyal, Senior Advocate with
Ms. Ambika Jindal, Advocate and
Ms. Urvi Khanna, Advocate
for appellant.

Mr. R.S. Pandher, Senior DAG, Punjab.

LISA GILL, J.

1. This appeal has been filed for setting aside order dated 25.04.2017, passed by learned Value Added Tax Tribunal, Chandigarh (hereinafter referred as Tribunal), whereby appeal No.53 of 2016, filed by present appellant was dismissed.

2. Brief facts necessary for adjudication of this appeal are that appellant is stated to be a dealer, duly registered under provisions of Punjab Value Added Tax Act, 2005 (hereinafter referred to as 'PVAT Act, 2005'), engaged in the business of iron and steel goods having TIN No.03941077594. It is the case of Department that during course of checking under Section 51 of PVAT Act, 2005, vehicle bearing registration No. PB-23-C-9545, loaded with scrap, was intercepted by the Excise and Taxation Officer (ETO) in question on 21.04.2014 at 3:00 PM, on G.T. Road, Mandi Gobindgarh. Upon asking, driver of this

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vehicle produced invoice no.26 dated 21.04.2014, issued by appellant i.e. M/s. Gagandeep Steel Industries, Mandi Gobindgarh, in favour of M/s Mathli Steels, Village Kumbra, Near Truck Stand, Mandi Gobindgarh. Photostat copies of purchase invoice no.56 dated 18.04.2014 of M/s Swami Steels, Yamuna Nagar, GR dated 18.04.2014, Declaration in Form VAT-36, Entry Tax receipt and release order bearing no.304234 issued by Railway Authorities, Faridabad, was produced. No document regarding E-trip was produced as is stated to be mandatory as per Rule 64-A of PVAT Act, 2005, notified w.e.f. 17.07.2013. Statement of driver was recorded. Variation between item purchased as per invoice issued by M/s. Swami Steels and further sold by the dealer was stated to be revealed, inasmuch as according to purchase invoice, dealer had shown purchase of Railway scrap whereas invoice in question issued by the dealer disclosed the sale of "scrap". Suspicion was raised in the mind of checking officer due to this variation, therefore, to verify the same, goods in question alongwith vehicle were detained and notice under Section 51(6)(a) of PVAT Rules, 2005 was issued to dealer through driver of vehicle for 22.04.2014, directing the dealer to produce relevant documents for verification of genuineness of transaction.

3. In response thereto proprietor of firm appeared on 21.04.2014 instead of 22.04.2014. He submitted written submissions claiming that there was no attempt to evade tax because goods in question were purchased in auction from Northern Railways by seller and that description of goods by Railways has also been specified as scrap. Detaining Officer, on considering the facts and the written submissions found that dealer had avoided E-trip and had wrongly defined description of goods with an intention to evade tax as tax on scrap (non excisable) is leviable @ 8% and scrap is liable to be taxed @ 2.5%. Change of description and charging varied rates of tax i.e. 1% and 2.5% on the same items were found

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to be evident from invoices issued by dealer. Goods detained were found to be Railway scrap which are covered by description of the term “Heavy Melting Scrap” (for short HMS) with a view to evade tax due to the State besides wilful and intentional avoidance of E-triping in violation of Rule 64-A of PVAT Rules.

4. Notice was then issued for 24.04.2014. Opportunity of hearing was provided to appellant. He was confronted with facts of the case and report of Detaining Officer and directed to produce account books to prove genuineness of transaction and further directed to explain as to why E-trips had not been generated in respect of the transaction at hand. Report for verifying the nature/kind of goods i.e. whether goods loaded in the vehicle are HMS or scrap was called from E.T.I. As per report submitted by ETI, prepared after personally visiting local dealers the goods loaded in the vehicle were checked physically by ETI and it was found that “cutting pieces of Railway line” were loaded in the vehicle. Upon inquiries made from various dealers in this business, it was concluded that goods in question fell in the category HMS because as per technical definition, scrap with thickness of more than 3/4 inches is called HMS. Premises of purchasing dealer were visited by E.T.I. and E.T.O. Assessing Authority concluded that an attempt to evade tax on various counts had been made by appellant i.e. by avoiding E-trip, by disclosing wrong description and by issuing invoice to dealer who has denied the purchase. Penalty of Rs.3,13,200/- was imposed under Section 51(7) of the PVAT Rules, 2005 vide order dated 24.04.2014, passed by Assistant Excise and Taxation Commissioner, Fatehgarh Sahib.

5. Appeal was filed by appellant – assessee under Section 62(1) of PVAT Act, 2005, before the first appellate authority against order dated 24.04.2014. Deputy Excise and Taxation Commissioner (Appeals), Jalandhar

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Division, Jalandhar, vide order dated 28.12.2015 concluded that reasonable opportunity has not been given to appellant by AETC. Case was remanded to the AETC, Fatehgarh Sahib with a direction to make proper enquiry and decide the case within two months of receipt of certified copy of order by giving reasonable opportunity of hearing to appellant. Liberty was also granted to appellant to raise any other point and argued before the enquiry officer. Being aggrieved of order dated 28.12.2015, passed by Deputy Excise and Taxation Commissioner (Appeals), Jalandhar Division, Jalandhar, appeal was preferred by appellant which was dismissed by learned Tribunal vide impugned order dated 25.04.2017. Aggrieved therefrom, present appeal has been filed by appellant.

6. Learned counsel for appellant vehemently argued that reliance by learned Tribunal upon clarification dated 13.09.2013 is not justified because such clarification was not in the public domain either by way of gazette notification or even by way of a public notice. It was not even available at the website of Excise and Taxation Department, therefore, there is no question of upholding penalty on that basis. Learned counsel for appellant submits that Department in fact has no authority to issue such a circular. Furthermore, item in question is iron and steel scrap which has been purchased from Railways. It cannot be covered under the term 'HMS' (Heavy Melting Scrap). Furthermore, once goods were duly reported at ICC, at the time of its entry from State of Haryana to State of Punjab, it cannot be said that there was an attempt to evade tax. It was further submitted that E-trip form was not required to be generated in the present case as Railway scrap cannot be excluded from the term scrap. Central Excise is not chargeable on this transaction either by Railways, by the dealers at Haryana or at Punjab. Learned counsel for appellant further argued that learned Tribunal failed to appreciate that appellate authority i.e. Deputy Excise and Taxation Commissioner (Appeals),

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Jalandhar, vide order dated 28.12.2015 had remanded the matter to AETC, Fatehgarh Sahib with the observation that reasonable opportunity had not been given to appellant by AETC. Appeal filed was by the present appellant, however, learned Tribunal has upheld the imposition of penalty. In the given facts and circumstances at best the matter should have been before AETC, to be decided after affording an opportunity of hearing to appellant. It is thus, prayed that this appeal be allowed.

7. Following substantial questions of law, it is submitted arise for consideration by this Court in this appeal:-

(i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty under Section 51(7)(b) on the basis of non-generation of e-Trip relying upon some clarification issued by the Commissioner which was not within the public domain by way of Notification or Public Notice?

(ii) Whether on the facts and in the circumstances of the case, the item in question could be considered as heavy melting scrap (HMS) whereas these have been sold by Railways as scrap and there was no technical opinion available with the respondent Department?

(iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in upholding the penalty in an appeal filed by the appellant against the order of remand passed by 1st appellate authority without there being any appeal by the Excise and Taxation Department?

8. Learned counsel for the State has opposed the appeal while submitting that impugned orders have been correctly passed by AETC as well as learned Tribunal. Present is a case of intra-State sale and not inter-State sale as has been alleged, therefore, there was requirement of generation of electronic receipt i.e. E-trip. He further refers to entry tax receipt dated 20.04.2014, where the commodity is mentioned to be Railway scrap, invoice (Annexure A-7) dated

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21.04.2014 and retail invoice dated 21.04.2014 where the goods are described as scrap. Change of description of the goods itself shows *mens rea* and intention to evade tax. Moreover, circular dated 13.09.2013 was duly published. Reference is made to affidavit dated 02.09.2019 of Mr. Vivek Pratap Singh, Excise and Taxation Commissioner, Punjab, filed in compliance of order dated 11.07.2019, passed in this appeal whereby it is succinctly clarified that in continuation of office order dated 17.07.2019 a clarification was issued by the then ETC on 13.09.2013 to the effect that goods and material obtained from cutting of old and used ships and boats and heavy melting scrap would be considered as iron and steel for purposes of goods specified under Section 64-A for Intra-State movement. This clarification was duly uploaded on the official website, details thereof are given in the affidavit. Dismissal of appeal was sought.

9. We have heard learned counsel for parties at length and have carefully gone through the file.

10. It is relevant to refer to Rule 64-A of PVAT Rules, 2005 at the outset. Rule 64-A of PVAT Rules, 2005 reads as under:-

“(1) The owner or person in-charge of the specified goods, before putting the same into transit to any Intra-State destination, for trade or commerce by any mode of transition, shall submit information in Form VAT-12-A, through Virtual Information Collection Centre on the official website of the department i.e. www.pextax.com; or any other website as may be specified by the Commissioner.”

11. Bare perusal of Rule 64-A of PVAT Rules, 2005 shows that generation of E-trip is required in the case of specified goods which were defined as per circular/order dated 17.07.2013 to be cotton, mustard, plywood, iron and steel excluding scrap. Iron and steel, excluding scrap of value less than

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Rs.50,000/- was specified goods and not beyond that. A further clarification was issued on 17.09.2013, which reads as under:-

"In continuation of my orders dated 17 July 2013 under Rule 2(hh) for the purposes of Rule 64-A of PVAT Rules 2005 read with section 3-A of the PVAT Act, 2005 I hereby clarify that "Goods and material obtained from cutting of old and used ships & boats and heavy melting scrap" is covered under the entry Iron and Steel in the orders *ibid*.

2. It is also clarified that no other goods except those specified in my orders dated 17.7.2013 are covered under rule 64-A of PVAT Rules, 2005 popularly known as e-trip.

3. It is further clarified that no other goods except those specified in my orders dated 17.7.2013 are covered under Rule 64-B of PVAT Rules, 2005 popularly known as e-ICC."

12. It is a matter of record and admitted that goods loaded in vehicle bearing registration no.PB-23-C-9545 was Railway scrap i.e. scrap made by heavy cutting Railway lines and was purchased from Northern Railway by M/s. Swami Steels, Yamuna Nagar. Appellant purchased this Railway scrap from M/s. Swami Steels on 21.04.2014. Truck carrying the goods was detained solely on the ground that upon vehicle verification, goods were found to be heavy melting scrap (Railway) but no E-trip was generated by appellant. This is duly admitted by driver of the vehicle. It is the case of appellant that in fact no E-trip was required to be generated as Rule 64-A of PVAT Rules, 2005 was not applicable to iron/Railway scrap. Physical verification of the items was conducted on 24.04.2014 and it was found that contents fall within the definition of heavy melting scrap being of thickness of more than 3/4th of an inch.

13. It is a specific finding of fact by AETC as well as learned Tribunal that goods loaded in the truck in question were heavy melting scrap which had

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been purchased by appellant from Yamuna Nagar/Jagadhri for selling the same to different firms. It is crystal clear that heavy melting scrap is covered under the entry "iron and steel" which mandate generation of E-trip. Argument raised by learned counsel for appellant that due publication of circular dated 13.09.2013 was not carried out, is not substantiated from the material on record. In order to be doubly sure, Co-ordinate Bench vide order dated 11.07.2019 had directed Excise and Taxation Commissioner, Punjab to file his affidavit with regard to publication and circulation details of Office Order dated 13.09.2013 issued under Section 64-A of PVAT Rules, 2005. In compliance thereof affidavit 02.09.2019 of ETC, Punjab has been filed wherein it is stated as under:-

2. That in compliance with the directions in the above stated interim order it is submitted that Rules 2(hh), 64-A, 64-B and 64-C were notified w.e.f. 10th July, 2013 whereby the Commissioner was empowered to "specify" particular goods for which prior electronic information was to be generated by taxable person before putting such goods into transit. The Commissioner, through these Rules was also empowered to specify the threshold value above which such generation of electronic information was mandatory. Such information through the Virtual Information Collection Centre is required to be uploaded on the official website of the department i.e. www.pextax.com; or any other website as may be specified by the Commissioner. Thus, it is clear that the Commissioner was empowered to implement the provisions of Rules 64-A, 64-B and 64-C by "specifying" the "goods" and their "value" for which electronic information was mandatorily required to be generated by taxable persons. It is further submitted that all notifications/clarifications required to be publicized were uploaded on department's website www.pextax.com in order to bring these into the public domain. As such, upon introduction of the e-ICC provisions through legislative amendment i.e. introduction of Rules 2(hh), Rule 64-A, Rule 64-B and Rule 64-C, on 10th July, 2013, the then ETC passed

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an order which was duly uploaded on the official website of the Department whereby goods for which taxable persons were required to generate e-Trip before dispatching them for transportation. For Intra-State movement of goods under Rule 64-A, the goods specified through this order were; cotton, sarson, plywood, iron & steel (excluding scrap), yarn and vegetable oil (edible/ non-edible) and all transactions with value in excess of Rs.50,000/- were covered under this order. This office order dated 17.07.2013 is annexed as Annexure-1 herewith. Subsequently in continuation of the office order dated 17.07.2013, a clarification was issued by the then ETC on 13.09.2013 whereby it was clarified that "goods and material obtained from cutting of old and used ships & boats and heavy melting scrap" would be considered as "Iron and Steel" for the purposes of goods specified under Rule 64-A for Intra-State movement. This clarification was also duly uploaded upon the official website of the Department. The fact that the clarification dated 13.09.2013 publicized through the official website of the Department was well within the Public Doman is duly corroborated by the fact that it was published in Punjab & Haryana Taxes ((2013)46 PHT 27(JS)) and Sales Tax Matters, 2013 STM VOL. 21, page no. 235 (JS), which are major journals of tax laws. Scanned copy of clarification (Signed by the then ETC) dated 13.09.2013 is annexed as Annexures-2 herewith. In addition, a screen shot taken from the site www.pextax.com of this signed clarification dated 13.09.2013 is annexed as Annexure-3 herewith. Copies of the concerned entries published in the Journals Punjab and Haryana Taxes ((2013)45 PHT 97(JS)) and Sales Tax Matters, 2013 STM VOL. 21, page no. 235 (JS) are annexed as Annexures-4 & 5 respectively.

14. Perusal of the factual matrix as above clearly indicates that penalty in question has been correctly imposed by the AETC and order dated 25.04.2017, passed by learned Tribunal is justified on all counts. Argument that in view of the order of remand passed by appellate authority, learned Tribunal in the appeal filed

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by present appellant at best could have upheld the order of remand while dismissing appeal filed by present appellant, is an argument devoid of any merit and is, hence, rejected. In the given factual matrix, remand of the matter to AETC would indeed be a futile exercise and is not called for in any manner.

15. In the given facts and circumstances we do not find any ground to cause interference in the matter. The questions of law as detailed in para 5 above, are thus answered against appellant and in favour of the Department.

16. No other argument was addressed.

17. Keeping in view the facts and circumstances as above, this appeal is accordingly dismissed.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

27.05.2025

Sunil

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