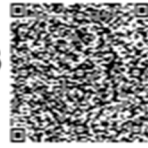


VATAP-9-2017 (O&M)

2025:PHHC:041904-DB



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

**CM-5656-CII-2017 in/and
VATAP-9-2017 (O&M)
Date of Decision: March 24, 2025**

State of Punjab

.....Appellant

Versus

M/s Goyal Automobiles

.....Respondents

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

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

Mr. Deepak Gupta, Advocate for the respondent.

LISA GILL, J.

CM-5656-CII-2017

1. Heard.
2. For reasons mentioned in the application as well as arguments addressed, delay of 101 days in filing the appeal is condoned.
3. Application is, accordingly, disposed of.

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1. This appeal has been filed for setting aside order dated 29.08.2016 passed by learned Punjab Value Added Tax Tribunal, Punjab, Chandigarh (for short – ‘the Tribunal’) whereby Appeal No. 227 of 2012 filed by respondent was allowed.

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2. Brief facts, necessary for adjudication of the appeal are that respondent, an authorized dealer, was engaged in sale of Hyundai cars manufactured by Hyundai Motors India Ltd., Chennai. Department received secret information that respondent used to bring Hyundai cars from Chennai for sale in State of Punjab, adopting the modus operandi of unloading trolly of cars near Ambala (in the State of Haryana) and said new cars were brought by road to its premises at Patiala (in the State of Punjab) by adopting escape routes with a view to evade tax. Information about cars was not reported at nearest ICC. Checking party was organized on receipt of secret information. While said checking party was present at Ghanaur on Bahadurgarh road, one Parveen Kumar was seen coming with a new Verna car bearing temporary registration certificate No. PB-11TC-0559, at about 8.15 p.m. on 25.03.2011. He produced copy of challan dated 21.03.2011 of M/s Goyal Automobiles, Rajpura road, Patiala and insurance cover note dated 21.03.2011 in favour of one Varinder, issued by Oriental Insurance Company Limited, Sector 17, Chandigarh and Trade certificate No. 97 valid w.e.f. 10.09.2009 and renewed up to 10.09.2011 issued by DTO Patiala. Vehicle was detained for verification of documents and statement of Parveen Kumar recorded. Designated Officer issued notice to owners of goods to appear and produce complete books of account and any other documentary evidence for verification of transaction. Business premises were also inspected on 29.03.2011, where respondent - Firm failed to produce all Account books, documents relating to car receipt, delivery registers, stock registers and others C-form registers. Designated Officer vide order dated 30.03.2011, concluded that respondent was transporting goods without proper

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and genuine documents, without furnishing information of goods as required under Section 51(2) and (4) of Punjab Value Added Tax Act, 2005 (for short – ‘Punjab VAT Act’). Penalty of Rs.4,34,454/- under Section 51(7) (c) of Punjab VAT Act was imposed.

3. First Appellate Authority while agreeing with findings of Designated Officer, dismissed the appeal filed by respondent vide order dated 30.08.2012. Said decision was challenged by respondent before learned Tribunal.

4. Learned Tribunal on considering the facts and circumstances concluded that there is a big question mark over genuineness of two alleged statements made by Parveen Kumar on the same day as there is nothing on record to indicate as to why Excise and Taxation Officer recorded two statements of the same person and that first statement of Parveen Kumar may have been recorded under pressure of team consisting of checking Officer during dead of night, therefore, said statement cannot be taken to be voluntary. It is further observed that cover note recovered from Parveen Kumar did not pertain to vehicle in question, vehicle was not apprehended at ICC or nearby check post by Officers posted at ICC on 24.03.2011. It was apprehended a day after it was received by the dealer at his show room and that material on record did not indicate intention of respondent to evade tax. Therefore, in the given circumstances, it was held that non giving of information became insignificant. It was, thus, concluded by learned Tribunal that vehicle in question when apprehended, was accompanied with proper and genuine documents and that respondent – Firm had no intention to evade tax.

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Accordingly, orders dated 30.03.2011 imposing penalty and 30.08.2012 upholding the same, were quashed. Amount of penalty was directed to be refunded. Aggrieved therefrom, this appeal has been filed by State/Department.

5. Learned counsel for appellant vehemently argues that learned Tribunal has grossly erred in allowing Appeal No. 227 of 2012 filed by respondent. Material on record is clearly indicative of modus operandi adopted by respondent to evade tax. Parveen Kumar, who was driving the vehicle at the relevant time, categorically stated that he was serving as Driver with respondent – Firm and it is on direction of Proprietor of respondent, that vehicle in question was brought from Ambala, after unloading it from trolly/trailer with no information being furnished at ICC Punjab. He further stated that he had adopted the escape route and that average sale of respondent is about 35 units per month, out of which information is generated at ICC in respect to only 50% thereof. Statement of Driver was corroborated with information collected from Taxation authorities at Chennai, Tamil Nadu, as goods have been dispatched to the respondent and C-form was also received from respondent by Principal dealer Hyundai, Tamil Nadu. Huge variation of sale was found in purchase shown by respondent qua the information given by Principal dealer/Firm at Chennai. This aspect, it is submitted, has not even been touched upon by learned Tribunal. Moreover, business premises of respondent were visited. Copies of documents i.e. purchase bill file, bank statements, C and D Form issued by firms, Sale invoices, challan book, insurance cover note as well as sale for the period 01.04.2010 to 31.03.2011 were sought. Despite assurance by Manager of respondent - Firm, necessary

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documents were not produced. Forgery of insurance cover note dated 21.03.2011 was apparent, but learned Tribunal has casually ignored the same. Car was shown to be sold by respondent from Bahadurgarh to Patiala in the name of Proprietor Mr. D.P. Goyal whereas it was intercepted on escape route i.e. Ambala-Ghanaur which is on the opposite direction of Bahadurgarh to Patiala. Furthermore, to cover up the same, amount is shown to have been paid on 23.03.2011 in the respondent account. Insurance cover dated 21.03.2011 reflects the name of one Varinder (a mechanic of respondent – Firm, who also used to bring vehicles through escape route) which was subsequently manoeuvred to show the name of D.P. Goyal in respect to the same car, engine number and chassis number. It is, thus, submitted that question of law which emanates for consideration is:

“ Whether in the facts and circumstances of the case, finding recorded by learned Tribunal is perverse in nature and that deletion of penalty under Section 51 (7)(c) of Punjab VAT Act is illegal and arbitrary, calling for setting aside of impugned order dated 29.08.2016?”

6. It is, thus, prayed that this appeal be allowed.

7. Learned counsel for respondent refutes the arguments as above and submits that FIR No. 132 dated 26.03.2011 under Sections 420, 465, 468, 471 and 120B IPC registered in respect to the same incident against Proprietor of Firm – D.P. Goyal alongwith three others (including Parveen Kumar) has been quashed by this High Court vide decision dated 22.09.2023 passed in CRM-M-50659-2019 vide detailed order. It is vehemently argued that in view of quashing of said FIR, there remains no basis for proceedings against respondent. It is, thus, prayed that this appeal be dismissed.

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8. We have heard learned counsel for parties at length and have gone through the file with their able assistance. We have also gone through file of CRM-M-50659-2019, which was directed to be tagged with this appeal vide order dated 06.03.2025. In our considered opinion, question of law as detailed in para 5 above does arise for consideration in this appeal.

9. It is a matter of record that vehicle in question (Hyundai brand new car) was apprehended by a team organized by the Department upon receipt of secret information. Parveen Kumar, Driver of respondent – Firm, produced following documents at the time of interception:-

1. Challan no. amounting to Rs. 8,68,907/-, duly issued by of M/s Goyal Automobiles. Village Chamarheri, Patiala, Patiala, issued in favour of Sh. D.P.Goyal, Kothi no. 1, Nihal Bagh, Patiala.
2. Temporary registration certificate no. PB11TC-0559.
3. Photocopy of Insurance cover note no. CHD-D-288673 dated 21.03.2011, issued by Oriental Insurance company, Chhotti Barandari, Patiala. (Issuing Code-8289/105476).”

10. Checking Officer found that documents had been issued from Bahadurgarh although car in question had not reached the place. Driver failed to produce VAT XXXVI form or any other form in respect to car in transit. It is a matter of record that no information was given at ICC in respect to vehicle in question. Parveen Kumar specifically stated that he entered the State of Punjab through escape route on directions of owner of respondent – Firm, after unloading car from trolly at Ambala, without submitting necessary information at any/nearest ICC of State of Punjab. Documents in question i.e. challan, temporary number and insurance cover note were handed over to him

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by owners of respondent - Firm. He also stated that one Varinder Kumar and Amrik Singh also brought cars from outside Punjab. In our considered opinion, observation by learned Tribunal in respect to veracity of statement of Parveen Kumar and doubt arising thereon, is devoid of any merit. Much stress has been laid in the impugned order as to why Excise and Taxation has recorded two statements of the drivers and that too in two different ink, thus, casting serious doubt on veracity of both statements with the observation that it is difficult to conclude that both statements were recorded on the same day. Conclusion arrived at by learned Tribunal, that statement of Parveen Kumar was recorded under pressure of team consisting of checking Officer, thus, not a statement made voluntarily, is not sustainable in the given factual matrix. Both statements recorded on the same day are not contradictory to each other and cannot be ignored only on the ground that it is not known as to why two statements were recorded by concerned official.

11. Furthermore, observation by learned Tribunal that apprehension of vehicle on 24.03.2011 comes under cloud as it was not apprehended at ICC or nearby check post or by Officers posted at ICC is again unsustainable inasmuch as it is the case of driver that he was coming through escape route. It is apparent that there was no intention to report the same at any ICC. Vehicle was apprehended by the team constituted upon receipt of secret information.

12. At this stage, it is pertinent to note that much stress had been laid on behalf of respondent, upon the factum of quashing of FIR No. 132 dated 26.03.2011 by this High Court on 22.09.2023. Perusal of order dated 22.09.2023 reveals that it was never brought to notice of Court that present appeal challenging order dated 29.08.2016 passed by learned Tribunal, was

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pending adjudication, after admission on 25.07.2017 for determination of substantial questions of law as referred to para 3 of appeal. It is crucial to note that CRM-M-50659-2019 was filed much later on 21.11.2019. It is mentioned in the said petition that learned Tribunal had set aside orders dated 30.03.2011 and 30.08.2012. Copy of order dated 29.08.2016 passed by learned Tribunal was tagged with petition as Annexure P8 but in a clever manner, pendency of present appeal is nowhere mentioned in the petition. In fact perusal of decision dated 22.09.2023 reveals that there is a specific, categorical averment and reliance upon decision dated 29.08.2016 by the petitioners therein, including proprietor of respondent – Firm for buttressing their case for quashing of FIR. It has been held in decision dated 22.09.2023, that as learned Tribunal has already quashed the penalty against Firm while not finding any case of tax evasion as alleged by the Revenue, FIR on the same set of allegations could not be allowed to continue, thus, said FIR as well as subsequent proceedings were quashed.

13. Upon careful consideration and scrutiny, we find that material on record, clearly indicates a definite attempt of evasion of tax on the part of respondent – Firm. Merely because car in question is stated to have been purchased by Proprietor of Firm himself does not absolve the Firm in any manner. This action by itself is indicative of an attempt to cover up. Learned Tribunal has been incorrectly swayed by the factum of purchase of car in question by Proprietor of firm. Finding recorded by learned Tribunal is unjustified and erroneous, hence, unsustainable. Question of law as raised is answered in favour of Revenue/Department and against respondent – Firm.

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14. Accordingly, present appeal is allowed. Impugned order dated 29.08.2016 passed by learned Tribunal is set aside and orders dated 30.08.2012 passed by Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala and order dated 30.03.2011 passed by Assistant Excise and Taxation Commissioner, Patiala are upheld.

15. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

March 24, 2025
Rts

(ALOK JAIN)
JUDGE

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