IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 34 of 2012 (O&M)
Date of decision: August 02, 2016

M/s Avdesh Tracks Private Limited

.. Appellant

v.

The State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SIINGH SIDHU

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

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Rajesh Bindal J.

1. The present appeal arising out of the order dated 3.11.2011, passed by Value Added Tax Tribunal, Punjab, Chandigarh (for short, 'the Tribunal') in Appeal No. 169 of 2011, was admitted for determination of the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in rejecting the claim of Input

Tax Credit merely on the grounds of technicalities when the selling dealer has shown the sales made to the appellant in his return and has duly deposited the tax on those sales ?

(ii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in holding that the provisions of Rule 54 are mandatory in nature ?"

2. The dispute is regarding claim of input tax credit for the period from 1.7.2009 to 31.3.2010.

3. Learned counsel for the appellant submitted that during the aforesaid period, the appellant purchased various consignments of non-alloy ingots of different quality. The seller of the goods is a unit covered under the Central Excise Act, 1944 (for short, 'the 1944 Act'). The invoice-cum-excise gate pass admittedly depicted the description and price of the goods, excise duty and the sale tax charged. At the time of filing of return, the appellant claimed credit of the input tax paid at the time of purchase of the aforesaid material. As the refund was admissible to the appellant, the Assessing Authority issued notice for determination thereof. Though all the invoices and other documents were produced by the appellant before the Designated Authority, but still the claim of input tax credit on the material purchased from Sada Shiv Casting Pvt. Ltd. was rejected, vide order dated 6.9.2010. Aggrieved against the order so passed, the appellant preferred appeal, which was rejected by the Deputy Excise and Taxation Commissioner (Appeals), Patiala vide order dated 24.5.2011. Still further, the appellant failed in appeal before the Tribunal.

4. Impugning the action of the authorities in rejecting the claim for input tax credit on the material purchased from Sada Shiv Casting Pvt.

Ltd., learned counsel for the appellant, while referring to the provisions of Section 13(2) of the Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act') and Rules 18, 21(3) and 51 of the Punjab Value Added Tax Rules, 2005 (for short, 'the Rules'), submitted that the entire information as provided for in the Rules was available in the invoices. Merely because on the original copy of the VAT invoice, the words "Input Tax Credit is available to a person against this copy" were not printed on the invoice will not debar the appellant from claiming input tax credit, as the same being highly technical, once sufficient material was produced in evidence before the competent authority to show that the seller had deposited the amount of tax collected from the appellant with the department. He further submitted that even submission of the tax invoice with the aforesaid words written thereon is also not a conclusive proof as the authority can still verify the claim. Meaning thereby the substance has to be seen and not merely the document. The appellant does not have any control over the kind of invoice issued by a selling dealer, hence, he cannot be penalised.

5. It was further submitted that input tax credit is available to a dealer even if VAT invoice is lost, destroyed or mutilated, as the claim can be made on production of other evidence. Claim is admissible in case the competent authority is satisfied. In support of his submissions, reliance was placed upon judgments of Division Bench of this court in Commissioner of Central Excise, Ludhiana v. Ralson India Ltd., 2006(202) ELT 759 and Commissioner of C. Ex., Delhi-III, Gurgaon v. Myron Electricals Private Limited, 2007(207) ELT 664; GCR No. 5 of 1999—Commissioner of Central Excise, Chd. v. M/s Aarti Steels Ltd., decided on 11.3.2010; CWP No. 11495 of 2012—M/s SPL Industries Ltd. v. Union of India and others,

decided on 31.1.2013 and VATAP No. 37 of 2014—M/s New Devi Grit Udyog, Raiseena, Gurgaon v. State of Haryana and others, decided on 8.9.2015.

6. On the other hand, learned counsel for the State submitted that Input Tax Credit is available to a dealer in terms of Section 13 of the VAT Act. Sub-section (12) thereof provides that input tax credit shall be allowed only against original VAT invoice. The onus to prove the same is on the claimant. Rule 18 of the Rules provides for conditions for claiming input tax credit. Rule 21 of the Rules provides that no input tax credit shall be admissible in respect of a purchase, in case the invoice does not contain the requisite information, as specified in Rule 54 of the Rules. Rule 54 of the Rules, *inter-alia*, provides that VAT invoice should have the words "Input Tax Credit is available to a person against this copy". The word "shall" in the provision, as referred to above, would clearly mean that the provisions are mandatory. In case these are not held to be mandatory for claiming the input tax credit, the Rules will be redundant.

7. Heard learned counsel for the parties and perused the paper book.

8. Before this court proceeds to deal with the issue raised, it would be appropriate to refer to the relevant provisions. The same are extracted below:

> "Section 13(1) (12) to (15) of the Act
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> SECTION 13. INPUT TAX CREDIT:
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> (1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including

capital goods, purchased by him from a taxable person within the State during the tax period:

xx xx xx

(12) Save as otherwise provided hereinafter, input tax credit shall be allowed only against the original VAT invoice and will be claimed during the period in which such invoice is received.

(13) In case the original VAT invoice is lost or mutilated, the input tax credit will be available only after the designated officer has determined the credit in the prescribed manner.

(14) If upon audit or cross verification or otherwise, it is found that a taxable person has made a false input tax credit claim, the Commissioner or the designated officer, as the case may be, shall order for recovery of whole or any part of such input tax credit, as the case may be, without prejudice to any action or penalty provided for in this Act.

(15) The onus to prove that the VAT invoice on the basis of which, input tax credit is claimed, is *bona fide* and is issued by a taxable person, shall lie on the claimant."

Rules 18, 21, 26 and 54 of the Rules

R.-18. **Conditions for input tax credit.-** The input tax credit under Section 13 of the Act will be admissible to a taxable person, if such a person has -

(a) in his possession the original VAT invoice, issued to him by a taxable person, from whom purchase of such goods has been made, wherein tax charged, has separately been shown; and

(b) maintained proper record of all purchases of goods, eligible for input tax credit and all adjustments thereto in chronological order.

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R. 21-. Inadmissibility of input tax credit in certain cases.-

(1) No input tax credit shall be admissible to a person for tax paid on purchase of goods, if such goods are lost or destroyed or damaged beyond repair.

(2) Input tax credit available on the goods, which are lost, destroyed or damaged beyond repair, shall be reversed immediately on occurrence of such event.

(2-A) Input Tax Credit shall be allowed to a taxable person to the extent of tax payable on the resale value of goods or sale value of manufactured/processed goods where such goods by the taxable person are sold at a price,-

(i) Lower than purchase price of such goods in the case of resale; or

(ii) Lower than Cost price in the case of manufactured/ Processed goods;

and in such cases the balance Input Tax Credit (ITC) shall be reversed by the taxable person :

Provided that the provisions of this sub-rule shall not apply in cases where the sale has been made at a price lower than the companies, that is to say, Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and HPCL Mittal Energy Limited.

(3) No input tax credit shall be admissible to a person in respect of such purchases for which he accepts from the selling person, an invoice which -

(a) has not been duly obtained from a taxable person against the bonafide transaction;

(b) does not contain all the required information as specified in rule 54; and

(c) has been issued by a person, whose certificate of registration has been cancelled under the provisions of the Act.

(4) Where some goods as input or output are lying in the stock of a taxable person and where such goods become tax-free from a particular date, then from that date, no input tax credit shall be admissible to the taxable person on the sale of goods lying in the stock or on using the goods as input for making such tax-free goods.

(5) No input tax credit shall be admissible on goods purchased by a person during the period, he opted for Turn over Tax (TOT) under Section 6 of the Act.

(6) Where input tax credit has already been availed of by a taxable person against the purchase of goods, a part of which is, either used in manufacturing the goods, specified in Schedule 'A' or disposed of otherwise than by way of sale, the input tax credit so availed for such part of goods will be deducted from input tax credit for the relevant period of use or disposal referred to above. If, as a result of such deduction, there is negative input tax credit balance for a particular period,

the person concerned shall pay such tax forthwith, as if the same was payable in the said period.

(7) Input tax credit in the case of Iron and Steel goods as enumerated in clause (iv) of section 14 of the Central Sales Tax Act, 1956, except wheels, tyres, axles, wheel sets shall not be available unless the purchaser is a first stage taxable person or second stage taxable person or third stage taxable person.

(8) where some goods as input or output are lying in the stock of a taxable person and where rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the goods as input for manufacturing taxable goods, at the reduced rate.

xx xx xx

R..-26. Input tax credit on duplicate invoice.-

(1) In case, the original VAT invoice has been lost, destroyed or mutilated, a taxable person, shall make an application to the designated officer in Form VAT-7 along with a duplicate copy of VAT invoice, issued by the seller and an indemnity bond in Form VAT-8 for the amount, equal to the amount of input tax claimed under such invoice.

(2) On receipt of such application, the designated officer shall cross-check the transaction and after satisfying about the genuineness of the transaction, shall allow the claim by an order to be passed within a period of sixty days from the receipt of such application.

(3) The taxable person shall avail the input tax credit only after the receipt of the order mentioned in sub-rule (2).

xx xx xx

R.-54. Particulars to be mentioned in a VAT invoice.-

(1) A VAT invoice, shall be issued from duly bound invoice or cash memo book, except when invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in triplicate, i.e. Original Copy, second copy and the last copy. The respective copies of the invoice shall bear these words clearly.

(2) On the original copy of the VAT invoice, the words "Input Tax Credit is available to a person against this copy" shall be printed and it will be issued to the purchaser only. On the second copy, the words "This copy does not entitle the holder to claim Input Tax Credit" shall be printed and this copy shall be used for the purpose of transportation of goods. The last copy shall be retained by the seller.

(3) The words "VAT Invoice" shall be prominently printed on the invoice.

(4) A VAT invoice shall contain, the following details:-

(a) A consecutive serial number printed by a mechanical or electronic process. In case of a computer generated invoice, the serial number may be generated and printed by computer, only if, the software automatically generates the number and the same number cannot be generated more than once;

(b) the date of issue;

(c) the name, address and registration number of the selling person.

(d) the name, address and registration number of the purchaser;

(e) full description of the goods;

(f) the quantity of the goods;

(g) the value of the goods per unit;

(h) the rate and amount of tax charged in respect of taxable goods;

(i) the total value;

(j) If the goods are being sold, transferred or consigned to a place outside the State, serial number of Form VAT-36;

(k) mode of transportation of goods and details thereof; and

(l) signatures of the proprietor or partner or director or his authorised agent.

(m) in case of sale of Iron and Steel goods as enumerated in clause-IV of section-14 of Central Sales Tax Act, 1956 except wheels, tyres, axles, wheel sets, the following certificate shall be printed on the backside of the VAT invoice:-

Certificate under Rule 54 of the PVAT Rules, 2005.

(To be printed on the backside of the invoice).

Certified that in case of goods covered under this invoice:

	First Importer/ Manufacture (1)	First State Taxable person (2)	Second Stage Taxable person (3)
Name of the Taxable person			
TIN			
Commodity			

Weight (In M.T.)

Invoice No.

Tax liability

Stamp and Signature

Note:- (1) The first stage taxable person shall fill column 1 and 2, the second stage taxable person shall fill column 1, 2 and 3.

2. Admissibility of ITC is subject to furnishing of correct information."

9. Section 13 of the Act provides that a taxable person shall be entitled to input tax credit in such manner, as may be prescribed. The input tax credit is available against original VAT invoice and can be claimed during the period in which such invoice is received. The input tax credit can be availed of if the designated officer determines the credit in the prescribed manner. The onus to prove that the claimant is entitled to input tax credit and the transaction is bonafide, is on him. In case, on audit or cross-verification, it is found that the actual person had claimed false input tax credit, the competent authority can order for recovery thereof without prejudice to any penal action.

10. Rule 18 of the Rules provides that input tax credit shall be available in case the taxable person has original VAT invoice issued to him by the taxable person from whom the goods have been purchased. The tax charged thereon has been shown separately. He has maintained proper record of his purchases eligible for input tax credit. Rule 21 of the Rules, which prescribes certain conditions for admissibility of input tax credit, *inter-alia,* provides that no input tax credit shall be admissible in case the

VAT invoice does not contain the required information as specified in Rule 54 of the Rules. Rule 26 of the Rules provides that in case the original VAT invoice has been lost, destroyed or mutilated, claim can be made on the basis of a duplicate copy thereof issued by the selling dealer and an indemnity bond in the form specified. The benefit is admissible to the claimant after the designated officer cross-checks the transaction and satisfies himself about the genuineness of the transaction. Rule 54 of the Rules provides the particulars to be mentioned in a VAT invoice. It provides that VAT invoice shall be issued from duly bound invoice or cash memo book, except where it is prepared on computer or any other electronic or mechanical device. It shall be in triplicate. The original copy of the VAT invoice shall contain the words "input tax credit is available to a person against this copy". It will be issued to the purchaser only. The second copy thereof will not entitle the holder to claim input tax credit. It shall be used only for the purpose of transportation of goods. The last copy shall be retained by the seller. "VAT Invoice" shall be printed on the invoice. The VAT invoice shall contain the serial number, date of issue, name, address, registration number of selling and buying dealer, description, quantity and value of goods, rate and the amount of tax charged, total value, mode of transportation, stage of purchase and the signature of the authorised person of the selling dealer.

11. The issue as to whether minor discrepancy in the contents of an invoice will be fatal for making a claim for input tax credit was considered by Division Bench of this Court in M/s New Devi Grit Udyog's case (supra). The case pertained to the claim made under Haryana Value Added Tax Act, 2003. It contains similar provisions with reference to the contents

of VAT invoice for claiming the benefit of input tax credit. The issue considered by this court was as to whether a purchaser can be penalised where the selling dealer does not comply with any of the requirements regarding particulars to be mentioned in VAT invoice. The answer was in negative. In that case, the discrepancy was non-mentioning of buyer's name and TIN number. It was opined that the purpose of incorporating Rule 54 (3) in the Haryana Value Added Tax Rules, 2003 is to safeguard the interest of revenue from non-genuine transaction. It is procedural in nature and does not confer any substantive right. In the event of non-mentioning of certain particulars, heavy onus is on the dealer claiming input tax credit to produce other sufficient evidence to show that the transaction was genuine and that the tax was paid to the selling dealer. While referring to the judgments in Standard Concrete & Stone Agency, Faridabad and others v. State of Haryana and others, (1998) 12 PHT 185 (SC), M/s SPL Industries Limited's case (supra); State of Punjab and another v. City Petro, (2009) 021 VST 353; Marmagoa Steel Limited v. Union of India, 2005(192) ELT 82 (Bom.) and Vimal Enterprise v. Union of India, 2006 (195) ELT 267 (Guj.), the Division Bench opined as under:

> **"12.** In the present cases, the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in ***Babu Verghese's*** case (supra) was different. The question involved

therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term.

13. In such circumstances, we find that the matter requires to be remanded to the Assessing Officer who shall consider the matter afresh and shall not reject the tax invoice only on the ground that it does not contain the name of the buyer and its TIN number where the buyer is able to justify the genuineness of the transaction by producing evidence before him. Ordered accordingly. Consequently, the impugned orders Annexures A.1, A.2, A.4 and A.7 are set aside. All the appeals stand disposed of as such."

12. Considering a similar issue with reference to entitlement of modvat credit under the 1944 Act, a Division Bench of this Court in Ralson India Ltd.'s case (supra) opined that mere technicalities should not be a hurdle in grant of modvat credit under the beneficial scheme once it is proved that the transaction was genuine and the tax had been paid to the State. Paragraph 9 thereof is extracted below:

"9. Rule 57A of the Rules allows to a manufacturer credit of any duty of excise etc. paid on the goods used in the manufacture of the specified goods. Rule 57G lays down the procedure to be observed by the manufacturer intending to take credit of the duty paid on the inputs. Sub-rule (3) contemplates

that no Modvat credit shall be taken by the manufacturer unless the inputs are received in the factory under the cover of various documents enumerated thereunder. However, sub-rule (6), which is in the nature of a non-obstante clause, carves out an exception to sub-rule (3). It provides that a manufacturer may take credit on the inputs received in his factory on the basis of original invoice, if duplicate copy of the invoice has been lost in transit, subject to the satisfaction of the Assistant Commissioner of Central Excise that : (i) the inputs have been received in the factory of the said manufacturer and (ii) the duty was paid on such inputs. The scope of satisfaction of the Assistant Commissioner is restricted to the two aforenoted aspects. From a conjoint reading of sub-rules (3) and (6), the intent and object of the Legislature is manifestly clear. It is to prevent the misuse of the modvat claims and any fraud being played by a manufacturer. Being a beneficial legislation, its object of input duty relief to a manufacturer should not be defeated on a technical and strict interpretation of the Rules governing modvat. In fact, in order to obviate any difficulty on account of loss of duplicate copy of the invoices, Notification No. 23/94- C.E. (N.T.), dated 20-5-1994 has been issued by the Board enabling a manufacturer to take Modvat credit on the basis of original copy of the invoice, provided the loss of duplicate copy of the invoice had occurred only in transit and the Assistant Commissioner is satisfied about its loss."

13. The issue was also considered by a Division Bench of this

Court in M/s SPL Industries Ltd.'s case (supra). It was a case where rebate of duty on export of goods was under consideration. The petitioner therein was not able to produce the prescribed form. It was opined that the form prescribed in the Rules was a *prima facie* proof of export of goods. If any material was available with the adjudicating authority, he could still opine that the goods were not exported. Even in the absence of the prescribed form, if there is sufficient material with the adjudicating authority, he can still come to the conclusion that the goods were, in fact, exported, which entitled the benefit to the party. Relevant paragraph thereof is extracted below:

> "We have heard learned counsel for the parties at length and find that the claim of the petitioner for rebate is required to be examined in the light of documents produced by the petitioner in support of the assertion that the goods were in fact exported. The production of original and the duplicate copy of ARE-1 Form duly endorsed by the Officer of the Customs is prima-facie proof of the fact that the goods have been exported. Even if the documents are produced, the adjudicating authority can still come to the conclusion that the goods were not exported. On the other hand, if the documents such as original or the duplicate copy of ARE-1 Form is not produced, the adjudicating authority can still come to the conclusion that the goods were in fact exported. The Central Excise Officer has to record a satisfaction that the claim is in order. It is question of fact as to whether the claim is genuine or not. Such satisfaction can be recorded even in the absence of

original/duplicate copy of ARE-1 Form. The express language of the notification is the recording of the satisfaction of the Central Excise Officer that the claim is in order so as to sanction the rebate either in whole or in part.

Since such exercise has not been undertaken by the Adjudicating Officer or any of the authorities under the Act, therefore, we set aside the orders passed and remit the matter back to the Adjudicating Authority to record a satisfaction to the effect whether the claim of the petitioner for rebate is in order or not."

14. The consistent view, as appears from the aforesaid judgments of this court, is that even in the absence of a statutory form provided for claiming any benefit, such as modvat credit or input tax credit, a dealer can still claim the same in case he is able to prove that the transaction was genuine and the tax had been paid to the selling dealer. Even production of the prescribed form was not final for claiming such a benefit as the competent authority could still opine, in case there is sufficient material available with him, that the transaction was not genuine and the claimant/dealer was not entitled to the benefit. The prescribed form is merely a *prima facie* proof.

15. In the case in hand, the selling dealer is a manufacturing unit covered under the provisions of the 1944 Act. For sale of the goods to the appellant, it had issued Invoice-cum-Excise Gate Pass. This is so provided under the Central Excise Rules, 1944. It contains all material particulars, such as name, address and registration number of the selling and buying dealer, printed invoice number, date, description, quantity and rate of goods,

excise duty charged, sale tax charged along with rate thereof, the date and time of removal of goods from the factory, as is specifically required under the 1944 Act and the Rules. The only discrepancy, on the basis of which input tax credit is sought to be denied to the appellant is that the invoice did not contain the words "Input Tax Credit is available to a person against this copy". The opinion expressed by the authorities is that it is a mandatory condition, which cannot be ignored. Mere non-mentioning thereof is fatal. In our view, the opinion expressed is contrary to the law laid down by this court as these type of technical defects in the invoices cannot be fatal for grant of input tax credit to the claimant. The claim of the appellant had been rejected only on the ground that the invoice did not contain the words "Input Tax Credit is available to a person against this copy". The input tax credit available to a person and the genuineness of the transaction otherwise had not been examined by the authorities to record a finding that the tax, credit of which was being sought by the appellant, had in fact been paid by him to the selling dealer at the time of purchase of goods.

16. Accordingly, question No. (i) is answered in negative while holding that the Tribunal was not justified in rejecting the claim of input tax credit merely on technicalities, when the dealer was able to show that the tax had been paid to the selling dealer and duly deposited with the State. Question No. (ii) is also answered in negative while holding that the provisions of Rule 54 of the Rules are not mandatory, in case the claimant/dealer is able to prove from other evidence that the transaction and the claim is genuine.

17. For the reasons mentioned above, the appeal is allowed. The matter is remitted back to the Assessing Authority to examine the genuineness of the transaction and the claim made by the appellant.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 02, 2016
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No