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

**VATAP-29-2016 (O&M)
Date of decision: 20.07.2026**

M/S INTEX TECHNOLOGIES (INDIA) LTD. ...Appellant

Vs.

STATE OF PUNJAB & ORS. ...Respondents

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Chetan Jain, Advocate and
Mr. Porush Jain, Advocate
for the appellant.

Mr. Ramandeep Singh Pandher, Addl. A.G. Punjab.

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ASHWANI KUMAR MISHRA, A.C.J. (Oral)

1. This appeal is filed under Section 68 of the Punjab Value Added Tax Act, 2005, (hereinafter referred to as 'PVAT Act') arising out of an order passed by the VAT Tribunal in Appeal No. 205 of 2014 dated 26.11.2015, whereby the same was dismissed and the penalty of Rs.94,500/- under Section 51(7) (c) of the PVAT, Act, imposed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, ICC, Shambu (Import) vide order dated 23.08.2012 was affirmed.

2. The appellant is a registered dealer under the provisions of the PVAT Act and Central Sales Tax Act, 1956 at Ludhiana, Punjab with TIN No. 03931103838. The company is engaged in the business of resale of mobile phones and parts, computers and computer peripherals and is duly paying tax

under the provisions of PVAT Act as well as Central Sales Tax Act, 1956.

3. It transpires that in the normal course of the business, the appellant having its Head Office at Delhi, dispatched 900 pieces of mobile phones vide Stock Transfer Note No. 1040100105 dated 09.04.2010, for a sum of Rs. 26,37,600/-, to its own godown near Dreamland Waterpark, Sahnewal, Ludhiana, Punjab. The consignment consisted of Cellular phones in the packed form and it was covered by proper Stock Transfer Note.

4. The concerned authority intercepted the consignment in transit under Section 51 of the PVAT Act. The driver of the vehicle produced the supporting documents including invoice etc., before the authority concerned. The concerned authority, however, was of the view that there was an intention to evade payment of tax on part of the appellant since the consignment included not only the mobile phone but also the accessory which was liable to be taxed at a higher rate i.e. 8%. The mobile carried a liability to pay VAT @ 5%. This was assumed to constitute an act to evade payment of tax, calling for levy of penalty. The show cause notice issued in this regard was responded to, thereafter the check-post authorities passed the first order dated 26.04.2010 imposing a penalty to the extent of 30% of penalty imposed @ Rs. 1,62,000/- as per Annexure P-1. This order was set aside in appeal and the matter was remanded. Pursuant to the remand order dated 15.12.2011, the competent authority imposed a penalty again vide order dated 23.08.2012. This order was challenged by filing an appeal before the First Appellate Authority. The First Appellate Authority also rejected the appellant's appeal vide order dated 28.03.2014. Aggrieved by such order, an appeal was preferred before the

Punjab Value Added Tax Tribunal, Chandigarh, under Section 63(1) of the PVAT Act, which too was rejected. Thus aggrieved, the appellant is before this Court.

5. Learned counsel for the appellant submits that there was a lack of clarity on the rate of tax payable on the accessory of a mobile phone, which came to be settled by the judgment dated 17.12.2014, passed by the Hon'ble Supreme Court in '***State of Punjab and other vs. Nokia India Pvt. Ltd.', 2015 AIR Supreme Court 1068.*** The Hon'ble Supreme Court, after going through the provisions and the applicable notifications, found that the accessory of mobile phone would be taxed under a separate head, which carried a liability of tax at an enhanced rate of 12.5%, as against 5% for the mobile phones. It is, therefore, submitted that at the relevant point of time, the assessee had sent the mobile phones along with accessories under a *bona fide* belief that it attracts liability of VAT @ 5%. It is also submitted that the Stock Transfer Invoice clearly mentioned that the mobile phone included the accessory, which clearly indicated that there was no intent to evade payment of tax. Submission is that since the imposition of penalty is dependent upon the satisfaction of the authority with regard to intent on part of the assessee to evade payment of tax, the routine imposition of such penalty is bad in law.

6. It is further urged that the issue of classification at best could have been gone into by the competent assessing authority and it was not open for the check-post authorities under the VAT Act to determine the issue of classification and presuppose existence of intent on part of the appellant to evade payment of tax.

7. In this regard, the learned counsel for the appellant has placed reliance upon the judgments of this Court in '***M/s Makin Paper Mills vs. State of Punjab and others***' as well as the Division Bench judgment of this Court in '***Nahar Spinning Mills Limited vs. State of Punjab***'. Learned counsel has also placed before us the Division Bench judgments of this Court in VATAP No. 18 of 2009, '***State of Punjab and others vs. M/s Shreyans Industries Ltd.***' and VATAP No. 4 of 2009, '***M/s. Jain Steel Industries vs. State of Punjab & Anr.***'.

8. Learned counsel for the State-respondent, on the other hand, contends that the law having been settled by the Supreme Court in ***Nokia India Pvt. Ltd. (Supra),*** it remains undisputed that the liability to pay tax on accessories was @ 12.5% as against 5% for mobile phones. It is also urged that this fact in itself establishes that there was an intent on part of the appellant to evade payment of tax and therefore, the orders passed by the authorities require no interference.

9. We have heard learned counsel for the appellant and learned State counsel and perused the materials on record.

10. Sections 51 (7) (a) and (b) of the PVAT Act are relevant for the present purposes and are reproduced hereinafter:-

> *"51. (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 along with 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 the 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 not 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."

11. The statute, in categorical terms specifies that for levy of penalty, there has to be an intent to evade tax on part of the assessee. This position in law stands crystallized by the Division Bench of this Court in ***M/s Makin Paper Mills (supra),*** wherein the Court, relying upon the judgment of this Court in ***'Xcell Automation vs. Government of Punjab and another', [2007] 5 VST 308 (P&H),*** has culled out the position in law 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.

(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."

12. In ***M/s. Jain Steel Industries (supra)***, the same principle has been enunciated by observing as under in paragraph 13:-

"13. In other words, the penalty under Section 51(7) of the Act can only be imposed, if there is sufficient material and specific finding that an attempt to avoid or evade the tax due or likely to be due has been made by the assessee and not otherwise."

13. In ***Nahar Spinning Mills Limited (supra),*** the Division Bench of this Court observed as under:-

"Coming to the merits, it may be observed that provisions to check and detain goods at a check post to prevent evasion of tax have already been upheld as being necessary to check evasion with a view to enforce the charging provision under the Punjab VAT Act, 2005 with reference to entry 54 of List-ll of the 7th Schedule of the Constitution. We have also noticed that mere conferring of such drastic power did not mean that power could be used

arbitrarily. Invocation of such powers is called for for checking evasion when a person, inter-alia, either conceals relevant information, gives misleading information or acts in any other clandestine way or where from the available information itself, attempt to evade tax is patent. The said power has to be exercised with caution and not as a substitute for ordinary assessment or penalty as separately provided for under the Act. Exercise of power may some time be overlapping and mere alternative procedure is not conclusive for not exercising the said powers, where it is clear that either there is evasion there being deficiency in documents, inaccurate declaration having been made about description, value and contents of goods or otherwise but where there may be bonafide dispute about interpretation of law, about taxability or otherwise, summary power of imposing penalty at the check post is not intended to be exercised."

14. In ***M/s Shreyans Industries Ltd. (supra)*** also a similar proposition of law has been laid down.

15. Reliance has also been placed upon the judgment in '***Parry and Company Limited vs. Commissioner of Sales Tax, UP Lucknow' 2004 138 STC 437***, wherein it was held that a check-post officer was not competent to go into the nature of transaction, which could only be decided in regular assessment proceedings. It was held that the imposition of penalty by the officer, in such circumstances, was over-stepping its jurisdiction.

16. It is in the above context that we are required to examine as to whether there was an intent on the part of the appellant to evade payment of tax.

17. It remains undisputed that the Hon'ble Supreme Court has since

settled in ***Nokia India Pvt. Ltd. (supra)*** that the accessory of a mobile phone would have to be taxed separately and cannot be treated as part of the mobile phone. That by itself would not lead to an inference of intent on part of the appellant to evade payment of tax.

18. Ordinarily, matters of classification would have to fall within the jurisdiction of the assessing authority and would not be gone into by the check-post authorities when the position in law in that regard was yet to be settled. Though, the law declared by the Hon'ble Supreme Court in ***Nokia India Pvt. Ltd. (supra)*** would be treated to be the law on the subject from the very beginning but for the purposes of ascertaining the intention on part of the assessee to evade payment of tax, we can conveniently acknowledge that the proposition in that regard came to be settled much later. Even otherwise, there was no intent found on part of the appellant to evade payment of tax since the accessories were clearly specified as being a part of the mobile phone. Had it been the intent of the appellant to evade payment of tax, it could have easily omitted to refer to the accessories in the Stock Transfer Invoices. The fact that the Stock Transfer Invoice recorded that accessories are also part of the mobile, would point clearly to the fact that there was no intent on part of the appellant to suppress the fact that the mobiles in transit were not accompanied by accessories.

19. We, therefore, are not convinced that there was any material available with the check-post authorities to infer an intent on part of the appellant to evade payment of tax. Since an intention to evade tax is the precondition for the imposition of penalty, in the absence of such intent being

established, the levy of penalty itself would become bad in law. We also find substance in the argument of the appellant's counsel that the aspect of classification could have been gone into by the assessing authority and could not have been determined by the check-post authorities at the first instance.

20. Taking a cumulative view of the matter, we find that the levy of penalty imposed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, ICC, Shambu (Import) vide order dated 23.08.2012 upon the appellant was not called for.

21. Accordingly, the orders dated 23.08.2012 and 26.11.2015 are set aside and the appeal is ***allowed***.

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

(ASHWANI KUMAR MISHRA)
ACTING CHIEF JUSTICE

(ROHIT KAPOOR)
JUDGE

20.07.2026
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No