

**BEFORE JUSTICE N.I.M.S.BIEDI, CHAIRMAN, VAT APPELLATE  
TRIBUNAL, PUNJAB.**

Appeal No.227 of 2018

Date of decision 22.04.2022

**M/s Rakesh Jewellers, Old Railway Road, Jalandhar.**

Appellant

Versus

**State of Punjab**

.... Respondent

Present: Sh. Amit Bajaj, Advocate for the appellant.  
Sh. Daldeep Singh Sukarchakia, Deputy Advocate General for the  
State.

Order

This order will dispose off an appeal u/s 63 of the PVAT Act against an order dated 06.04.2018 affirming the order of penalty of Rs.899723/- including surcharge imposed by the Assistant Excise & Taxation Commissioner, (MW), Jalandhar u/s 51(7)(b) of the PVAT Act @ 1.1% to the tune of Rs.31 8231- u/s 51(12) of the PVAT Act, 2005.

Brief facts relevant for the decision of the present appeal are that the appellant had purchased 1KG gold bar from M/s Robiun Jewellers Pvt. Ltd., Sarafan Bazar, Hoshiarpur vide invoice dated 23.03.2017 and was transporting the same in the car. The said gold bar was being carried and transported by the Son or the partner of the appellant Mr. Naresh Malhotra in a car. The car was intercepted by the Detaining Officer u/s 51 of the PVAT Act, 2005. The case of the revenue is that Sh. Nitin Malhotra disclosed that no invoice regarding the transaction of gold bar was available. Presuming that there was violation or Section 51(2) of the PVAT Act, the gold bar was sealed and car was brought to the officer of AETC (NW), Jalandhar. The gold bar was sealed and detained u/s 51(6)(a) of the Act. A notice was issued to the owner of the goods directing to produce the account books to prove the genuineness of the transaction. "The Id. AETC (MW) Jalandhar vide order dated

08.04.2017 arrived at a conclusion that the appellant had transported the gold bar without any invoice and had not furnished information as provided under Rule 64-A or the PVAT Rules. The said order was challenged before the First Appellate Authority. The First Appellate Authority dismissed the appeal vide impugned order dated 06.04.2018. The First Appellate Authority held that the appellant had failed to produce documents pertaining to the transaction and had failed to produce the documents i.e. print of invoice at the time Of detention. It was held that the invoice had been produced the next day. A finding was given that the appellant, while transporting transaction was duty bound to keep all documents ready to prove the genuineness of the transaction. In the absence of the document at the time of checking, was indicative of the intention of the dealer to avoid the tax. The order of the imposition of penalty was upheld.

Aggrieved against the order dated 06.042018, the appellant has preferred this appeal. I have heard Ld. Counsel for the appellant at length and Sh. Daldeep Singh Sukarchakia, DAG for the State assisted by the concerned ETO. During the Course of arguments, the Ld. ETO had, on the basis of the record, disclosed that the appellant did not carry a print copy of the invoice, however, on his mobile phone he had shown the copy of invoice and a photograph of the same had been taken on the mobile of the detaining officer. I have seen the photograph of the computer screen which was shown to the Detaining Officer. The said photo has been retained on the record. The excuse of the appellant that the print out was not available on account of some defect in the printer, but the photograph of the original invoice was carried in the computer is apparently true. The factum issuance of the invoice by the dealer has been established by producing, the seller before the inquiry authority. The record of the sale transactions by the seller has been produced on the record in the shape of books maintained in the ordinary course of the business. During the Course of arguments, it was conceded by the State Counsel that provision of Rule 64-A are not applicable as the gold is not one of the specified goods.

After hearing both the Counsel and going through the record, the only irregularity which has been found to have been committed by the appellant is that he was not carrying the print out of the invoice though the same was being carried in the shape of software, in the computer. In view of the advancement of the technology, the documents can be carried in the shape of software in the electronic instrument, like computer and mobile phone. From

the totality of the circumstances, it is not made out as to how the present case is said to be the case of evasion or tax by violating provision of Section 51(2) of the PVAT Act. The impugned order dated 06.04.2018 is thus illegal and not sustainable and deserves to be set aside, so far as the penalty u/s 51(7) is concerned. For the irregularity committed by the appellant, penalty u/s 60 can be imposed. Ordered accordingly. A penalty of Rs.10,000/- would serve the end of justice for irregularity committed by the appellant while carrying the gold bar.

The appeal is allowed, the order of imposition of penalty is hereby set aside.

Chairman  
VAT Appellate Tribunal