(1995) 05 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4210 of 1995

Aero Club APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 14B(7)

Citation : (1996) 112 PLR 578

Hon'ble Judges : S.P. Kurdukar, C.J;Swatanter Kumar, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; A.K. Walia, A.A.G. for the Respondent Nos. 1 to 3, for the Respondent

Judgement

S.P. Kurdukar, C.J.—Heard learned counsel for the parties and perused the written statement filed on behalf of respondents No. 1 to 3. It is alleged by the petitioner that on 30.12.1994, he had sent goods on consignment basis to M/s Embassy Shop, Ludhiana-respondent No. 4 from New Delhi vide invoices Annexures P-2 to P-10-A. The value of the goods in total is stated to be Rs. 16,54,219/-. The respondent No. 3 detained the goods vide order dated 31.12.1994 Annexure P-13. On 3.1.1995 the petitioner-firm offered a bank guarantee of Rs. 5.00 lacs (annexure P-14) and got the goods released vide release order (Annexure P-15).

4. u/s 14-B(7) of the Punjab General Sales-Tax Act, 1948, the Officer detaining the goods has to follow the procedure prescribed therein. The petitioner claims to be the owner of the goods. The detained officer was required to issue notices to the petitioner and respondent No. 4 M/s Embassy Shop and was to pass appropriate order after hearing them. On 14.3.1995, the Assistant Excise and Taxation Officer passed an order imposing penalty on M/s Embassy Shop, Ludhiana-respondent No. 4. This order came to be passed on the footing that M/s Embassy Shop, Ludhiana-respondent No. 4 is the owner of the goods.

5. Mr. Goyal, learned counsel for the petitioner urged that no notice whatsoever

was given to the petitioner and in fact, the consignment/goods belong to the petitioner and it was consigned to respondent No. 4 M/s Embassy Shop on agency basis. The petitioner is very much owner of the goods and that is why he petitioner was interested in getting the goods released and therefore, bank guarantee was furnished. Mr. Goyal learned counsel for the petitioner also drew our attention to bank guarantee which was furnished by the petitioner.

6. After hearing the counsel for the parties, we are of the opinion that the Assistant Excise and Taxation Commissioner has not followed the procedure prescribed u/s 14-B(7) of Punjab General Sales-Tax Act, 1948 while passing the order of imposing penalty.

7. The Assistant Excise and Taxation Commissioner may be empowered to impose penalty upon M/s Embassy Shop, Ludhiana - respondent No. 4 and to encash the bank guarantee of the petitioner for the purpose of realising the penalty amount. However, in our opinion, the whole procedure followed by the Assistant Excise and Taxation Commissioner was not only irregular but also contrary to the principles of natural justice. The petitioner had claimed the ownership of the goods and furnished the bank guarantee. Ownership of the goods, therefore, will have to be determined between the petitioner and M/s Embassy Shop. We, therefore, direct the Assistant Excise and Taxation Commissioner - respondent No. 2 to issue notice to the petitioner in terms of Section 14-B(7) of the Punjab General Sales-Tax Act, 1948 and after hearing the petitioner as well as M/s Embassy Shop, Ludhiana - respondent No. 4, respondent No. 2 pass appropriate order in accordance with law. Should there be any need to. review the order dated 14.3.1995, the said Authority will review the same in order to do justice between the parties.

8. It is also made clear that in the event the petitioner succeeds in showing that no penalty is leviable under the Punjab General Sales-Tax Act, 1948 in respect of goods in question, the authority will refund the amount of bank guarantee which is already encashed. We are told that the Deputy Director, Excise and Taxation Enforcement, Chandigarh is vested with the jurisdiction, he may transfer the case to the Assistant Excise and Taxation Commissioner in accordance with law. Since the bank guarantee has already been encashed, we direct the Deputy Director, Excise and Taxation Enforcement, Chandigarh to dispose of the proceedings expeditiously and preferably on or before 14.8.1995. The petitioner to remain present in the office of the Deputy Director, Excise and Taxation Enforcement, Chandigarh on 30.5.1995 and seek further direction from the said Officer.

9. The writ petition to stand disposed of in the above terms. In the circumstances of the case, no order as to costs.

