
(2003) 10 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15181 of 2002

Crown Gaskets (India)

APPELLANT

Vs

Asstt. Excise and Taxation Officer and Another

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 37(5), 37(6)

Citation : (2004) 137 STC 340

Hon'ble Judges : V.M. Jain, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Shatin Goyal, for the Appellant; Ritu Bahri, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the order dated January 14, 2002 passed by the Sales Tax Tribunal, reducing the penalty to 15 per cent of the value of the goods and disposing of the appeal accordingly.

2. The facts in brief are that during the course of roadside checking on October 21, 2000, vehicle No. HR-BG-3955, carrying gasket papers from Delhi to Bahadurgarh was checked in Modern Industrial Area, Bahadurgarh. The driver was asked to produce the relevant documents. The driver produced only a challan inward S.T. 38 issued by the petitioner-firm but the challan was completely blank and the driver disclosed that no other document was given to him except the said blank challan inward S.T. 38. Accordingly, the goods were detained u/s 37(5) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") and a show cause notice u/s 37(6) of the Act was issued vide order dated December 12, 2000. The Assistant Excise and Taxation Officer (Assessing Authority) imposed a penalty of Rs. 1,40,000/- u/s 37(6) of the Act. Aggrieved against the same, the petitioner filed an appeal. The Joint Excise and Taxation Commissioner (A) Rohtak, vide order dated June 29, 2001 dismissed

the appeal. Thereupon the petitioner filed further appeal before the Sales Tax Tribunal, Haryana. As referred to above, while disposing of the appeal, the Sales Tax Tribunal had reduced the penalty to 15 per cent of the value of the goods vide order dated January 14, 2002. Aggrieved against the same, the petitioner filed the present petition in this Court.

3. Notice of motion was issued. Reply has been filed on behalf of the respondents.

4. We have heard the learned counsel for the parties and have gone through the record carefully.

5. The learned counsel appearing for the petitioner submitted before us that the provisions of Section 37(6) of the Act were not applicable in this case inasmuch as penalty could be imposed only if there has been an attempt to evade the tax due under the Act and since the petitioner is a 100 per cent export oriented unit and imports goods from foreign country only and no sale and purchase is made by the petitioner locally, such purchases and sales are not leviable to tax under the Act and as such, it could not be said that there was an attempt to evade tax due under the Act. On the other hand, the learned counsel appearing for the respondents submitted before us that since the petitioner was transporting the goods without proper documents, it could be presumed that the person transporting the goods was attempting to evade tax due under the Act.

6. After hearing the learned counsel for the parties and perusing the record, we find considerable force in the submissions made before us by the learned counsel for the petitioner. The Sales Tax Tribunal in its order dated January 14, 2002, copy annexure P13, had given the following findings :

"I have considered the matter carefully and have also seen the facts on record and the judgments relied upon by the parties. It is not disputed that the appellant unit is a 100 per cent export oriented and imports goods from the foreign countries only and no sale and purchase is made by the appellant locally. Such purchases and sales are not leviable to tax under the Haryana General Sales Tax Act, 1973. It is also a matter of fact that the goods in question were purchased from USA and were got released from Delhi Dry Port after payment of customs duty worth Rs. 3,18,957/- on October 19, 2000. It is also a matter of record that when the goods were detained by the officer, the appellant unit vide its letter dated October 23, 2000 had requested to the officer detaining the goods to verify the documents with the material in all respects before the release of the goods. But no such verification was done by the officer. In such a situation help can be sought from the judgment relied upon by the counsel for the appellant, i.e., Delhi Assam Roadways Corporation Ltd. Vs. State of Haryana and Another, where it has been held by the High Court that a presumption can be rebutted by the person concerned by producing evidence to prove that the allegation contained in the notice is incorrect and that in fact no attempt to evade tax had been made."

7. From a perusal of the above, it would be clear that the Sales Tax Tribunal had

found it as a fact that the purchases and sales made by the petitioner were not leviable to tax under the Haryana General Sales Tax Act, 1973 and that at the time when the goods were detained, the petitioner had requested the officer detaining the goods to verify the documents with the material in all respects before the release of the goods and that the presumption could be rebutted by the person concerned by producing evidence to prove that the allegations contained in the notice were incorrect and that in fact, no attempt to evade the tax had been made. The Tribunal itself having found that the purchases and sales made by the petitioner were not leviable- to tax under the Act, in our opinion, there would be no occasion to say that there was any attempt to evade the tax due under the Act. As referred to above, u/s 37(6) of the Act, penalty could be imposed only if after inquiry the officer finds "that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods.....a penalty of not less than fifteen per cent and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods". If the sales and purchases made by the petitioner were not leviable to tax under the provisions of the Act, it could not be said that there had been any attempt to evade the tax due under the Act. That being so, there would be no question of imposing penalty, even minimum penalty, on the petitioner merely because at the time of checking required documents were not with the truck driver. This is especially so when it is found by the Sales Tax Tribunal itself that the petitioner had requested the officer detaining the goods to verify the documents with the material in all respects before the release of the goods. Under these circumstances, in our opinion, the respondents were not authorised to impose any penalty upon the petitioner. On the other hand, the respondents were duty bound to release the goods without imposition of any penalty. Delhi Assam Roadways Corporation Ltd. Vs. State of Haryana and Another, relied upon by the learned counsel for the respondents, in our opinion would have no application to the facts of the present case. Non-production of challan duly filled in before an officer checking the goods may be a sufficient reason to believe that the person transporting the goods was attempting to evade the tax due under the Act, but that would be only in those cases, where tax is leviable under the provisions of the Act. However, where the sales and purchases were not leviable to tax under the provisions of the Act (as found in this case by the Sales Tax Tribunal), it could not be said that the person transporting the goods was attempting to evade the tax due under the Act. This is especially so when as laid down in the Delhi Assam Roadways Corporation Ltd. Vs. State of Haryana and Another, the presumption can be rebutted by the person concerned by producing evidence to prove that no attempt had been made to evade payment of tax. Thus, the law laid down by this Court in Delhi Assam Roadways Corporation Ltd."s case [2001] 123 STC 272; (2001) 17 PHT 418 would have no application to the facts of the present case.

8. No other point has been urged before us.

9. For the reasons recorded above, the present writ petition is allowed, the order

dated January 14, 2002 passed by the Sales Tax Tribunal is set aside and the order imposing penalty upon the petitioner is quashed. However, there shall be no order as to costs.