(2009) 01 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Delux Enterprisers APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2009) 21 VST 258

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is an assessee''s appeal filed u/s 68(2) of the Punjab Value Added Tax Act, 2005 (for brevity "the Act") challenging the order dated October 22, 2007 passed by the Value Added Tax Tribunal, Punjab (for brevity "the Tribunal") in Appeal No. 275 of 2006-07.

2. The facts are not in dispute. On September 29, 2004 vehicle No. HR-12-2592 which was carrying cotton yarn was checked by the staff at Chamkaur Sahib, District Ropar. The document produced by the driver included challan No. 21 dated September 29, 2004 issued by the Nalagarh (HP) firm for 30 bags of cotton yarn of the value of Rs. 1.05 lakhs. After physical verification of the truck the driver produced another bill No. 1 dated September 29, 2004 of the value of Rs. 2,10,470 issued by M/s. Shivalik Fibres Pvt. Ltd., Ropar, in favour of the Sohrab Spinning Mills, Malerkotla. No GR or trip sheet was produced. In his statement the driver of the vehicle as well as an employee, Shri Ram Dayal, accompanying the vehicle stated that the entire consignment of 100 bags of cotton yarn were loaded from Nalagarh (HP) and that in respect of 30 bags of cotton yarn the bill was given to them at Nalagarh but in respect of 70 bags belonging to the firm at Ropar the bill was given to them after they entered the territory of Punjab. The Inspector was deputed to verify the authenticity of bill No. 1 dated September 29, 2004 for 70 bags issued by M/s. Shivalik Fibres Pvt. Ltd., Ropar. He visited the business premises of the firm. The premises of the

firm at Ropar was found closed and one Shri Ajay Jaggi who is landlord of the premises had stated that the firm did not function at the given address. All these facts lead to the conclusion that 70 bags were loaded from Nalagarh and not from the premises of M/s. Shivalik Fibres Ltd., Ropar, whose bill was produced subsequent to physical checking. No books of account was produced to prove the genuineness of the bill. Accordingly it was concluded that there was an attempt to evade tax and the Assistant Excise and Taxation Commissioner vide his order dated October 14, 2004 imposed penalty of Rs. 1,05,235. Appeal against the afore-mentioned order was dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala on November 10, 2006. The petitioner then approached the Tribunal. The Tribunal after noticing the aforesaid facts dismissed the appeal. The assessee has further approached this Court by filing the instant appeal.

3. We have heard the learned Counsel for the appellant at a considerable length and find that the findings of the Tribunal as also of the Assistant Excise and Taxation Commissioner/Deputy Excise and Taxation Commissioner are well based and do not warrant any interference of this court. Even otherwise u/s 68(3) and (4) of the Act no appeal can be entertained for determination of findings of fact. Such an appeal could only be on the basis of substantial question of law as contemplated by Section 68(3) and (4) of the Act which in fact does not arise in the present case. A perusal of Section 68(4) of the Act shows that the appeal could be heard only on a substantial question contemplated by Section 68(3) of the Act. We find that no question of law warranting admission of the appeal would arise. Therefore, the appeal is wholly without merit and the same is liable to be dismissed.

4. In the light of the view we have taken on the merits of the case, we do not feel the necessity of passing any order on the application seeking condonation of 192 days delay in the filing of appeal.

5. Accordingly the appeal fails and the same is dismissed.

