
(2009) 02 P&H CK 0078
In the Punjab And Haryana At Chandigarh

Devi Dass Gopal Krishan Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Central Sales Tax (Punjab) Rules, 1957 — Rule 3A
Punjab General Sales Tax Act, 1948 — Section 14B(7)

Citation : (2009) 25 VST 434

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

Bench : Division Bench

Judgement

M.M. kumar, J.—In pursuance of order dated 11.9.1997, passed by this Court in S.T.C. No. 6 of 1996, the Sales Tax Tribunal Punjab, Chandigarh (for brevity, "the Tribunal"), has referred the following question of law, in respect of assessment year 1991-92, for determination of this Court:

Whether on the facts and circumstances of the case the officer Incharge of the check barrier was not empowered u/s 14B of the Punjab General Sales Tax Act, 1948 read with Rule 3A of the Central Sales Tax (Punjab) Rules, 1957, to check and detain the goods and impose penalty on the ground that it was an inter-state sale and not transfer of goods on consignment basis.

2. According to the statement of facts, the petitioner is a registered dealer at Moga, under the Punjab General Sales Tax Act, 1948 (for brevity, "the Act") and the Central Sales Tax Act, 1956 (for brevity, "the CST Act"). The nature of its business is to acquire oil seeds and cotton, which are Schedule-C goods under the Act. All oil seeds are crushed into oil and Khal. The oil is sent either to its branch use outside the State of Punjab where it has its sale outlets or are dispatched to the agents outside the State of Punjab for sale of the same on consignment basis.

3. On 9.7.1991, the Check Barrier Officer at Mohali, intercepted one consignment, which was being carried in Truck No. PB-6201, loaded with mustard oil packed in tins. After scrutinising the documents accompanying the

consignment, an interception note was issued. The petitioner appeared before the Officer of the Barrier, who on scrutinising the documents was to determine the genuineness of the consignment. The petitioner apprised the detaining officer that on many earlier occasions such like consignments have been moving from Moga to outside the State and on one occasion it was intercepted and penalty was imposed under identical and similar circumstances, which had been quashed. However, a penalty of Rs. 60,000/- was imposed for the instant consignment u/s 14-B (7) of the Act and it was recovered in cash. The basis for imposing penalty was that the goods were sold in the course of inter-state sale and there was an attempt to evade the tax.

4. On appeal before the Deputy Excise and Taxation Commissioner (Appeals), Ferozepur Division, the plea raised by the petitioner was rejected and the order of penalty was upheld, vide order dated 28.9.1992. The second appeal before the Tribunal was also dismissed on 14.1.1994 and the argument raised before the Tribunal that the goods were being transported for sale on consignment basis and that no event of tax was involved, was rejected. The other argument that there was no jurisdiction with the Checking Barrier Officer to proceed to determine the nature of the transaction did not find favour with the Tribunal. Thereafter, the petitioner filed an application u/s 22(1) of the Act before the Tribunal for referring the question of law to this Court but the request was turned down, vide order dated 30.4.1996. The petitioner then approached the High Court u/s 22(2) of the Act and this Court vide order dated 11.9.1997 directed the Tribunal to refer the above extracted question of law for adjudication of this Court along with the statement of facts.

5. Mr. Arun Nehra, learned Counsel for the petitioner has vehemently argued that according to Section 14-B (2) of the Act, four documents are required to accompany any consignment, which are to be scrutinised by an officer at the Barrier Check Post. He has maintained that the four documents would be (i) a goods receipt or log book; (ii) challan or delivery note; (iii) Form No. XXIV (A) as per the proforma in the Act; and (iv) Intimation of the consignment to the Assessing Officer under Rule 3A of the Central Sales Tax (Punjab) Rules, 1957 (for brevity, "the Rules").

6. Learned Counsel has pointed out that the jurisdiction to determine the nature of consignment does not lie with the officer on the check barrier but the same vests entirely in the Assessing Authority. According to the learned Counsel if such a course is permitted then there would be complete chaos at the check post and every consignment would be subjected to suspicion. The whole assessment procedure would be undertaken at the check post itself. He has referred to the findings recorded by the Tribunal at page 36 concluding that the intention of the appellant is to send the goods on consignment whereas the documents accompanying the goods along with the detailed mentioned therein regarding rates and actual amount of goods show that these goods were sold. From this it has been assumed by the Tribunal that the goods meant for trade on

consignment basis and under transportation are not correspondingly covered by genuine and proper documents. In support of his submissions, learned Counsel has placed reliance on a Division Bench judgment of the Karnataka High Court rendered in the case of Automobile Products of India Limited v. State of Karnataka 1991 (81) STC 414, which according to him squarely cover and answer the question in favour of the petitioner and against the revenue. He has further submitted that the provisions of Karnataka Sales Tax Act, 1957, are pari-materia to the provisions of the Act and, therefore, the judgment would squarely apply to the facts of the present case. Learned Counsel has also placed on record an affidavit dated 30.10.2006 alongwith copy of the assessment order dated 16.12.1996, passed by the Assessing Authority-cum-Assistant Excise and Taxation Commissioner, Moga, in respect of assessment year 1991-92, and pointed out that even in the assessment proceedings the Assessing Authority has not considered the transaction to be interstate sale rather has been held to be consignment sale. The affidavit and assessment order dated 16.12.1996 is taken on record as Mark "A".

7. Ms. Sudeepti Sharma, learned State counsel has, however, submitted that the submission of four documents alone would not create a bar on the jurisdiction of the officer at ICC barrier. She has contended that the officer has to be thoroughly satisfied about authenticity of documents and information disclosed. According to her the information gathered from the documents in the present case led to the belief that it was already a sold consignment and it could not be regarded as consignment sale.

8. Having heard learned Counsel for the parties, perusal of paper book with their able assistance and provisions of the statutes we are of the view that the question of law referred for adjudication deserves to be answered in favour of the dealer and against the revenue. Firstly the regular assessment for the year in question has been completed vide order dated 16.12.1996 by the Assessing Authority-cum-Assistant Excise and Taxation Commissioner, Moga. It is evident from a perusal of affidavit and assessment order (Mark "A") that all transfers to branches and appointed agents outside the State of Punjab were assessed as consignments sale and not as inter-state sales. The consignment in question, namely, the consignment covered under Challan No. 245, vide Consignment Note No. 0304, dated 8.7.1991 in respect of bill of Rs. 3,03,175/- was also assessed as consignment sale on the basis of books of accounts and record produced before the Assessing Authority, Moga. The assessment order has attained finality.

9. Secondly we find substantial merit in the submission of Mr. Nehra that the officer in charge at the check post would be deprived of jurisdiction after he finds that requisite documents have been submitted and prima facie there is nothing on record to suspect the authenticity of information given therein. In the present case the dealer has complied with Section 14B (2) and (6) of the Act which mandates as under:

14-B. Establishment of check posts or information collection centres and

inspection of goods in transit.

(1) xxx xxx xxx

(2) The owner or person incharge of a goods vehicle shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a goods receipt and a sale bill or cash memo, or delivery note containing such particulars as may be prescribed, in respect of such goods meant for the purpose of trade, as are being carried in the goods vehicle and produce a copy of each of the aforesaid documents to an officer incharge of a check post or information collection centre or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place; Provided that a dealer selling the goods from within the State or outside the State in the course of inter-state trade or commerce, shall also furnish declaration with such particulars, as may be prescribed.

(3) to (5) xxx xxx xxx

(6) (i) If the officer incharge of the check post or information collection centre or any other officer as mentioned in Sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub-section (2) or Sub-section (4), or the driver has not stopped the vehicle as required under Sub-section (3) or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be recorded in writing and after hearing the person concerned, order the detention of the goods along with the vehicle for such period, as may reasonably be necessary. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee, if registered under the Act to the satisfaction of the officer detaining the goods and in case the consignor or the consignee is not registered under the Act, then on furnishing a security in the form of cash or bank guarantee or crossed bank draft, which shall be thirty per cent of the value of the goods, rounded upto the nearest hundred. (ii) If the owner or the person in-charge of the goods has not submitted the documents as mentioned in subsection (2) and Sub-section (4) at the nearest check post or information collection centre, in the State of Punjab, as the case may be, on his entry into or exit from the State, such goods shall be detained and shall be released only after the matter is finally decided under Clause (iii) of Sub-section (7).

10. A perusal of the aforesaid provisions makes it evident that a person incharge of a goods vehicle is under obligation to carry with him (a) goods vehicle record or in other words a trip sheet or a log book; (b) a goods receipt; (c) a challan or delivery note containing prescribed particulars; Form No. XIV-A as per proforma of the Act; and an intimation of the consignment to the Assessing Officer as per the requirement of Rule 3-A of the Rules showing that the dealer is selling the goods outside the State or within the State. If the aforesaid documents are

shown and found authentic then no further steps are required to be taken by the officer incharge of a check post. However, as per provisions of Sub-section 6, if the officer incharge of the check post or Information Collection Centre has reason to suspect that the goods under transport are meant for trade and not covered by proper and genuine documents or for other reasons find that the person transporting the goods is attempting to evade payment of tax then for reasons to be recorded in writing, a detention order of goods alongwith vehicle could be passed and the goods have to be released on executing a bond with sureties in the prescribed form or furnishing a security or even bank guarantee etc. The expression "reason to believe" used in Sub-section (6) of Section 14-B of the Act imposes an obligation on the officer incharge of the check post to act objectively and not merely on the basis of his arbitrary opinion formed. The example could be if the details given in all the documents do not tally with the goods in the vehicle then there may be justification for detention of the goods. However, the provisions do not permit the office to go to the extent of determining the nature of the transaction, which, in fact, lies within the jurisdiction of the regular assessing authority. Therefore, the natural corollary is that the answer to the question is liable to be given in favour of the dealer and against the revenue. For the aforesaid proposition we draw support from the following observation of the Karnataka High Court in the case of Automobile Products of India Limited (supra):

...In our opinion, the plain language employed in the section as well as in its intendment does not clothe the Check-post Officer with jurisdiction to make an assessment as long as the documents carried in the vehicle satisfy the requirement of the prescription made under Sub-section (2) of Section 28-A of the Act or the Rules made under the Act.

From a perusal of annexure A, the show cause notice, we find that all the documents were carried. The only discrepancy was between the invoices which indicated the persons who had made the purchase and paid the inter-State sales tax and the goods vehicle record which disclosed that the delivery was not to be made to those persons but to some other concern in Bangalore. Whether such an entry in the goods vehicle record was a mistake or not, to our mind, it appears to be immaterial. We find from the order of the Appellate Tribunal that it totally misdirected itself in treating the penalty order as if it was an assessment order passed by a competent assessing authority and looked into the question whether the sale was intra-State sale or inter- State sale. That perhaps was due to the mistake originally committed by the Check-post Officer and perpetuated by the other appellate authorities. Assuming for a moment that indeed the documents carried by the vehicle in question did disclose a sale between the seller in Bombay, manufacturer of the vehicles, and M/s. South India Automotive Limited at Bangalore who had to take delivery of those scooters, then the information so gathered by the Check-post Officer could at best be utilized to bring to tax by the concerned authority at Balgalore where M/s. South India Automotive Corporation Limited would be a registered dealer. Any mistake made as claimed, as we have already expressed, cannot clothe the Check-post Officer with jurisdiction to do

something which he was not expected to do under the provisions of Section 28-A of the Act. His job was to ascertain whether the prescribed documents accompanied the vehicle and the goods which in turn were liable to tax under the Act. Anything else he did would be without jurisdiction and we have no hesitation to state, that on account of his total misdirection, there was improper exercise of jurisdiction and the order of the Appellate Tribunal, the first appellate authority as well as Check-post Officer are, therefore, liable to be quashed and they are accordingly quashed.

11. When the facts of the present case are examined in the light of the aforesaid observations then it becomes evident that the order of penalty passed by the Officer Incharge of the Check Post, dated 11.7.1991 and consequential order passed by the Appellate Authority as well as by the Tribunal are not sustainable in the eyes of law because the jurisdiction of classifying the nature of transaction has been assumed by the Officer Incharge of the Check Post. In the regular assessment, as has been noticed in the preceding para, the transaction has been found to be consignment sale by the Assessing Officer. The aforesaid factual position would be clear from the perusal of order of assessment alongwith the affidavit, which have been taken on record as Mark "A". Therefore, the question of law deserves to be answered in favour of the dealer and against the revenue.

12. Accordingly, we dispose of the reference and answer the question of law against the revenue and in favour of the petitionerdealer.