(2011) 01 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 71 of 2010

Diya Enterprises APPELLANT

Vs

Deputy Excise and Taxation Commissioner and Others RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 51(2), 51(7)(b), 68

Citation : (2012) 47 VST 41

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Aman Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee-appellant u/s 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated June 11, 2009 passed by the Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in Appeal (VAT) No. 246 of 2008-09, proposing to raise the following substantial questions of law :

(a) Whether the act on the part of the respondents to impose the penalty without taking into account that the transaction was a genuine, is legally sustainable in the eyes of law ?

(b) Whether the action on the part of the respondents not to consider the genuine documents and impose penalty only due to one bona fide mistake which occurred due to the fault of printer, is legally sustainable in the eyes of law ?

(c) Whether the impugned orders are legally sustainable in the eyes of law ?

Briefly stated, the facts necessary for adjudication as narrated in the instant appeal are that the assessee is a registered dealer and engaged in the business of M.S. ingots (Iron and Steel) and sent goods to M/s. Mittal Steel Industries against challan as required u/s 51(2) of the Act. The said goods were intercepted by the Excise and Taxation Officer, Ludhiana-respondent No. 3. The assessee produced the relevant documents like stock register, challan but respondent No. 2 vide order dated April 25, 2007 imposed the penalty amounting to Rs. 1,39,500 u/s 51(7)(b) of the Act. Feeling aggrieved, the assessee approached the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana-respondent No. 1 who vide order July 28, 2008 dismissed the appeal. Against the said order, the assessee filed an appeal and the Tribunal vide order dated June 11, 2009 dismissed the same holding that the goods were meant for trade and were not covered by proper and genuine documents as required u/s 51(2) of the Act, and as such there was an attempt to evade tax. Hence, the present appeal by the assessee.

2. We have heard learned counsel for the appellant.

3. The point for consideration in this appeal is that whether the vehicle which had crossed barrier when it was intercepted by the Excise and Taxation Department was carrying genuine documents as required u/s 51(2) of the Act.

4. The assessing officer, the Deputy Excise and Taxation Commissioner (Appeals) and the Tribunal have concurrently come to the conclusion that there was an attempt on the part of the dealer to evade tax and accordingly penalty amounting to Rs. 1,39,500 was imposed u/s 51(7)(b) of the Act. The relevant finding recorded by the Tribunal is as under :

As per section 51(2) of the Punjab Value Added Tax Act, owner or person in charge of the goods has to carry with him goods vehicle record, goods receipt, a trip sheet or log book. He has also to carry a sale invoice, bill or cash memo or delivery challan, containing such particular as may be prescribed. However in this case, driver in charge of the vehicle had only delivery challan. It had not any number. Even the name of the person to whom goods were being sent was not mentioned properly and the destination where the goods were to go, was not mentioned. There was no GR with the driver. The delivery challan with the driver could be destroyed at any time, after the goods reached destination. Production of stock register showing the goods could not take place of GR or invoice as entry in the stock register of the dealer can always be made later on knowing that the goods were detained.

The only conclusion which could be arrived at was the goods were meant for trade and were not covered by proper and genuine documents as required u/s 51(2) of the Punjab Value Added Tax Act and there was an attempt to evade tax. The authorities below had rightly taken action and imposed penalty u/s 51(7)(b) of the Act.

5. No illegality or perversity could be shown by the learned counsel for the assessee in the concurrent findings of fact recorded by the authorities below which may warrant interference by this court. No question of law much less a substantial question of law arises in this appeal. Accordingly, the appeal is dismissed.

