

(2010) 08 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : V.A.T. Case No. 1 of 2010 (O and M)

Ganesh Rice Mills

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 37, 37(6)
Haryana Value Added Tax Act, 2003 — Section 36(2)

Citation : (2011) 42 VST 215

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The judgment of the court was delivered by Adarsh Kumar Goel J.—This petition has been filed u/s 36(2) of the

Haryana Value Added Tax Act, 2003 (for short, "the 2003 Act"), seeking a mandamus for referring substantial questions of law, arising out of

order of the Haryana Tax Tribunal constituted under the provisions of the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") which

was later replaced by the 2003 Act dated April 6, 2004, to the following effect:

(i) Whether the finding that the version put forth by the Petitioner supported by the document is afterthought can be sustained in law in the facts and

circumstances of the case ? Is the finding not perverse ?

(ii) Whether the Tribunal is right in law in holding that there is attempt to evade tax and it is fit case where the provisions of Section 37(6) are

applicable and penalty is sustainable in law ?

(iii) Whether in the facts and circumstances of the case penalty u/s 37(6) could be imposed and upheld ?

2. On July 27, 1996, two trucks of the Petitioner were intercepted by the enforcement staff, transporting rice from Indri to Karnal without any

document, as required u/s 37 of the 1973 Act. Proceedings were initiated for levy of penalty on the allegation of attempt to evade tax. Finally,

penalty was levied equal to 15 per cent of the value of the goods which was the minimum prescribed. Order of penalty was upheld in appeal by the

appellate authority and on further appeal by the Tribunal. Plea of the Petitioner-Assessee was that the goods were being supplied to M/s. Doon

Valley Rice Ltd., Kamal for export. No tax was attracted in such a transaction and therefore, there was no attempt at evasion of tax. This plea was

rejected by the Tribunal with the following findings:

In the absence of documents it could not be ascertained as to which place and as to which dealer the goods were being taken. Shri Narender

Kumar, partner of the dealer-firm who appeared before AETO (Enforcement)-cum-Assessing Authority did not disclose about the issuance of any

bills and documents that the goods were being sent to M/s. Doon Value Rice Ltd., Kamal. Had the documents been issued, he would have

appeared before AETO (Enforcement) -cum-Assessing Authority, Kamal, immediately after checking or the day following. He appeared before

the checking officer after a lapse of nine days of July 27, 1996 when the goods were intercepted. Production of the documents was afterthought.

In this case, we are of the opinion that the dealer could not rebut the presumption enshrined in Section 37(6) of the Act by natural reliable and

dependable evidence. Joint ETC (Appeals), Ambala, has already slashed the amount of penalty, which is little more than 15 per cent of the

estimated value of the goods. We do not find any reason to further slash the amount of penalty.

3. We have heard learned Counsel for the parties and perused the record.

4. The learned Counsel for the Petitioner submitted that even though no documents were being carried with the vehicles, there was material to

show that the goods were to be supplied to M/s. Doon Valley Rice Ltd., Karnal for export, in which case, there could be no question of any

attempt to evade tax.

5. This submission cannot be accepted. In absence of any document, plea taken by the Petitioner that the goods were to be supplied to M/s. Doon

Valley Rice Ltd., for the purpose of export, has not been accepted. The statutory authorities have concurrently rejected the said plea. Finding

recorded is a pure finding of fact. It is not a case where any material has been ignored or any wrong provision of law has been applied. In absence

of any document being carried at the time of transportation, rejection of version of the Petitioner that the goods were meant for export, is certainly

a possible view.

6. No substantial question of law arises.

7. The petition is dismissed.