(2013) 09 P&H CK 0383

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 76 of 2009 (O and M)

Ganpati Foods	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 45 GST 12 : (2014) 67 VST 348

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : K.L. Goyal and Manish Verma, for the Appellant; N.K. Verma, D.A.G., Punjab, for the Respondent

Judgement

Ajay Kumar Mittal, J.—The assessee has preferred this appeal u/s 68(2) of the Punjab Value Added Tax Act, 2005 (in short, "the Punjab VAT Act") against the order of the Punjab Value Added Tax Tribunal (in short, "the Tribunal") dated April 16, 2009, annexure A18, in Appeal (VAT) No. 197 of 2008-09, claiming following substantial questions of law:

(i) Whether, on the facts and in the circumstances of the case, the appellant/ assessee belonging to Haryana State has made any attempt to evade the tax u/s 51(6)(b) of the Punjab Value Added Tax Act 2005, which may result in imposition of penalty u/s 51(7)(c) of the Act ibid?

(ii) Whether, on the facts and in the circumstances of the case, the finding of the learned Tribunal that Bill and the documents, produced by the driver of the vehicle at the time of checking of the goods, can be destroyed, is patently perverse in nature as after the issuance of advance form VAT-03 at the time of start of the movement of goods from Haryana, the entry cannot remain out of books either of the Haryana dealer or of the purchasing Punjab dealer and therefore, there can be no attempt to evade tax under the Punjab VAT Act, 2005?

(iii) Whether a statement of a driver of a public carrier recorded by the detaining officer at the time of checking of the vehicle and the goods, can be relied upon as final and conclusive, unless an opportunity of cross-examination is provided to the owner of the goods, upon whom penalty may be imposed for any violation allegedly made by the driver of the vehicle, during the transport of the goods?

(iv) Whether driver of the vehicle, after entering Punjab State, from Haryana State, voluntarily entering the information collection centre, furnishing necessary papers for entry, can be held, having violated the provisions of section 51(6)(b) of the Punjab VAT Act, 2005 resulting in imposition of penalty u/s 51(7)(c) of the Act ibid?

(v) Whether mere non-declaration of goods at entry point in ICC Punjab can result in imposition of penalty u/s 51(7)(c) of the Punjab VAT Act, 2005, when at the time of checking of the goods, the driver has produced all the documents including Bill, goods receipt, exit form of Haryana as well as the insurance policy for the goods and those documents have not been found ingenuine?

Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the appeal may be noticed. The assessee is a dealer duly registered under the provisions of the Haryana Value Added Tax Act, 2003 (in short, "the Haryana VAT Act"). It is having its oil solvent plant at Nilokheri in District Kamal. In the process, rice bran oil is extracted/manufactured and sold as such. The appellant has substantial turnover on account of this sale upon which necessary tax is being paid in Haryana State. In the normal course of its business, the appellant sold rice bran oil to one M/s. Bathinda Chemicals Limited, Bathinda, a registered dealer under the Punjab VAT Act vide bill dated January 28, 2008 booked with Ahmedgarh Transport Co., Ludhiana, for its transportation from Nilokheri to Bathinda. The statutory declaration required under the Haryana VAT Act in form VAT D3 was also attached with the documents accompanying the goods. Once the entry is made in the books of account, there is no question of any evasion of tax in Haryana. As far as Punjab dealer is concerned, it has to issue C form obtained by him from his assessing authority in Punjab State as without it the Haryana dealer will have to pay higher rate of tax on the goods. Therefore, there can be no attempt to evade tax under the Punjab VAT Act. The goods were insured through insurance policy of New India Assurance Company Limited dated January 28, 2008, annexure A4. On its way from Nilokheri to Bathinda, the driver of the vehicle had to cross the ICC (Import), Shambhu set up by the Punjab Government u/s 51 of the Punjab VAT Act. The duty of the driver is to furnish bill, goods receipt (GR) and other documents to the computer clerk who after entering the same returns all the original documents to the driver of the vehicle. Thereafter, necessary entry is made by the ETO and after clearance the police personnel posted there allow the vehicle to move out of the ICC. In the present case, the driver of the vehicle entered the ICC and a stamp was affixed on his documents to this effect. Thereafter, the papers were delivered to the concerned clerk who returned the same after its necessary perusal. When the documents were returned to the driver, he was under the bona fide impression that necessary entry had been made. He could not see if the returned papers included the declaration form generated in the computer by the excise and taxation officials or not. When the vehicle was in movement to its destination, i.e., Bathinda, it was checked by the Excise and Taxation Officer (Mobile Wing), Bathinda, and a case was made out for violation of section 51(6)(b) of the Punjab VAT Act on the ground that the information had not been generated at the ICC section centre while entering Punjab State. The goods were detained on January 29, 2008 and the detaining officer issued notice for March 31, 2008. The assessee appeared before the Excise and Taxation Officer (ETO) and explained the position regarding the relevant documents. The detaining officer refused to release the goods unless the penalty was paid in cash or bank guarantee equal to 50 per cent of the value of the goods as furnished. The Assistant Excise and Taxation Commissioner (AETC) after receipt of the report issued notice to the appellant for February 6, 2008 and after examining the matter, imposed penalty amounting to Rs. 7,18,913 vide order, annexure A13. The goods were released on furnishing of bank guarantee on February 1, 2008. Aggrieved by the order, the assessee filed appeal before the first appellate authority which was dismissed vide order dated September 29, 2008, annexure A15. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated April 16, 2009, annexure A18, the Tribunal dismissed the appeal. Hence the present appeal.

2. The learned counsel for the appellant referred to various documents appended along with the appeal as annexures A1 to A11 to urge that there was no attempt to evade tax whereas in fact it was an error or mistake committed by the driver of the vehicle not to have checked whether declaration was entered at the ICC centre. It was submitted that the tax which was due, was deposited in the State of Haryana and, thus, there was no attempt on the part of the appellant to evade tax. It was argued that apart from the invoices there was a challan accompanying the goods in transit issued in the prescribed form under the Haryana VAT Act and the driver was carrying the insurance papers also. In the GR as well, the factum of insurance and value of the goods was mentioned and there was a stamp of entering in the ICC at Shambhu. Learned counsel contended that the Tribunal had not examined the genuineness or otherwise of the aforesaid documents and in such a situation, therefore, injustice has occurred. Support was drawn from the judgment of the apex court in Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., and judgment of this court in Amrit Banaspati Company Ltd. Vs. The State of Punjab, with the prayer that the matter for cancellation of penalty may be remanded to the Tribunal to decide it afresh after considering the entire material on record.

3. The learned counsel for the Revenue supported the impugned order passed by the Tribunal.

4. In the present case, there is a dispute about verification of documents accompanying the goods. The case of the appellant is that the goods in question

were duly accompanied by the invoice/GR, statutory form VAT D3 and the insurance policy. Further, there was stamp of ICC at Shambhu on the GR. The driver out of ignorance being illiterate did not generate the declaration at the ICC. The Tribunal without examining the authenticity and veracity of these documents has on suspicion concluded that there was an attempt to evade tax on the part of the appellant. In view of the aforesaid documents, no conclusion could be drawn that the declaration was not obtained with a view to evade tax unless the documents were rejected on the ground that they were not genuine. The Tribunal was required to have recorded definite finding whether these documents were genuine or not and thereafter adjudicated the matter. Thus, in the facts and circumstances noticed hereinabove, it would be appropriate if after setting aside the impugned order dated April 16, 2009, annexure A18, passed by the Tribunal, the matter is remanded to it to decide the same afresh expeditiously in accordance with law after hearing both the parties. Ordered accordingly. The appeal stands disposed of.