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(2009) 01 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Jiwan Coach Builders APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 08-01-2009

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 22(2)(b)

Citation : (2010) 28 VST 196

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

Bench : Division Bench

Judgement

M.M. Kumar, J.—This Court has issued directions on November 25, 1992 u/s 22(2)(b) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act") directing the Sales Tax Tribunal, Punjab to refer the following question of law arising from S.T. Case No. 59 of 1992:

Whether the instructions issued by the Excise and Taxation Commissioner, Patiala, vide communication dated January 8, 1974, to all the Assessing Authorities (Excise and Taxation Officer) in the State of Punjab for charging tax at the rate of six per cent sales tax on the bus bodies instead of 10 per cent were not binding on the sales tax authorities?

2. The facts as have been revealed in the reference order are that the dealer is engaged in the manufacture of bus bodies and sale thereof. The assessment for the year 1972-73 was framed by the Assessing Authority, Jalandhar on November 9, 1976 and additional demand of Rs. 67,087.19 was raised. The dealer preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Jalandhar who had vide order dated September 9, 1977 accepted the plea of the dealer that the rate of tax on the bus bodies should be six per cent instead of 10 per cent in accordance with the instructions issued by the Excise and Taxation Commissioner, Patiala on January 8, 1974. On a suo motu proceedings initiated u/s 21(1) of the Act, the Excise and Taxation Commissioner, Punjab, examined the legality and propriety of the order dated September 9, 1977 passed by the Deputy Excise and Taxation Commissioner (A) and the same was set aside. The

Commissioner also remanded the matter to the Assessing Authority for de novo assessment vide order dated July 9, 1981. Therefore, the assessment proceedings were initiated again. The Assessing Authority vide order dated February 23, 1982 again levied tax at 10 per cent on taxable turnover of Rs. 14,19,334 on the sale of bus bodies to the public. On appeal, the Deputy Excise and Taxation Commissioner (A) upheld the order of the Assessing Authority vide his order dated October 8, 1984 by observing that the Assessing Authority had rightly framed the assessment in accordance with the directions issued by the Commissioner and has charged tax at 10 per cent on the sale of bus bodies to public instead of six per cent. The dealer approached the Sales Tax Tribunal which has upheld the levy of tax at 10 per cent on bus bodies instead of six per cent vide its order dated September 29, 1990. It was thereafter that the dealer filed reference application before the Tribunal u/s 22(1) of the Act which was declined by the Tribunal vide its order dated July 31, 1991 by observing that the question of law referred for adjudication of this Court would not arise out of the order of the Tribunal. The declining of reference was challenged by the dealer before this Court u/s 22(2)(b) of the Act and accordingly vide order dated November 25, 1992 passed in Sales Tax Case No. 59 of 1992 directions were issued to the Tribunal for preparing the statement of case and refer the aforementioned question to this Court for adjudication.

3. Having heard learned Counsel for the parties and perused the record we are of the view that the reference deserved to be answered in favour of the dealer. The matter is not res integra. In the case of Ambala Coach Builders Vs. The State of Haryana and Another, a fundamental issue was raised, namely, whether the expression "motor vehicle" included component parts thereof as per the expression used in entry No. 1 of Schedule A of the Haryana General Sales Tax Act, 1973. This Court placed reliance on the judgments of the honourable Supreme Court rendered in the cases of Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, , Commissioner of Sales Tax Vs. Pritam Singh, and Bajoria Halwasiya Service Station Vs. The State of Uttar Pradesh and Another, and came to the conclusion that bus bodies mounted on motor chassis cannot be regarded as accessories or spare parts but are necessarily to be regarded as component parts of motor vehicle. The Bench went on to observe as under (at page 47 of 39 STC):

...It is seen that wherever the Legislature wanted component parts to be taxed in the same manner as the principal machine or equipment of which they were parts, it had expressly said so. I am, therefore, unable to say that the expression "motor vehicles" includes its component parts such as bus bodies. In fact this had been the view of the Department itself until very recently as may be seen from the instructions issued by the Government on September 9, 1964, according to which, sales tax had to be charged at the general rate of six per cent and not at the special rate of 10 per cent. It is only recently that these instructions have been modified and fresh instructions issued on October 8, 1974. Bus bodies have now been instructed to be taxed at the rate of 10 per

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cent. Even this was done because of an objection raised by the audit party of the office of Accountant-General, Haryana. I, therefore, hold that the bus bodies on motor chassis are not liable to be taxed as if they fall within entry 1 of Schedule A. The writ petition is, therefore, allowed and the order dated May 4, 1976 of the Excise and Taxation Officer is quashed.

4. Accordingly in accordance with the aforementioned observations, the bus bodies have to be regarded as component parts of the motor vehicle.

5. Once the aforesaid factual position is clear then it follows that it has to be assessed at six per cent as per entry 9 of Schedule A to the Act.

6. In view of the above, the question is answered in favour of the dealer and against the Revenue.

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