(2014) 01 P&H CK 0278

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 1 of 2013 (O&M)

J.P. Engineers APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(2)
Haryana Value Added Tax Act, 2003 — Section 31, 31(2), 31(6), 36

Citation : (2014) 70 VST 414

Hon'ble Judges : Anita Chaudhary, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Rajiv Agnihotri, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate-General, Haryana, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the appellant u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "the State Act") against the order dated July 17, 2012, annexure A4, passed by the Haryana Tax Tribunal at Chandigarh (in short, "the Tribunal"), claiming following substantial questions of law:

(i) Whether the order passed by the Haryana Tax Tribunal, annexure A1, was right in upholding the order of AETO charging tax and imposing penalty under the Haryana Value Added Tax Act, 2003 whereas the transaction admitted was taking place in the course of inter-State trade and commerce?

(ii) Whether the order passed by the authorities below is not illegal by holding the transaction as inter-State trade and commerce in summary transaction and rejecting the plea of the appellant that these are sale in transit?

(iii) Whether the order passed by the authorities below is not illegal in absence of finding of attempt to evade tax?

(iv) Whether the initiation of proceedings itself is not wrong when there is no reason but mentioned in the detention notice that ''detected carrying aluminium ingots from Faridabad to Bhiwadi (Raj.). Failed to provide the proof of goods tax. The goods detained u/s 31(6) of the VAT Act transaction needs verification?''

(v) Whether the goods can be detained u/s 31(6) for mere verification?

A few facts relevant for the decision of the controversy involved, as, narrated in the appeal may be noticed. The appellant-concern is a dealer registered with the Department of Sales Tax under the State Act and the Central Sales Tax Act, 1956 (in short, "the Central Act"). It is engaged in the trading of aluminum ingots in the State of Haryana. It is filing prescribed quarterly returns and discharging tax obligations in accordance therewith. It is also making sale in transit, as allowed u/s 6(2) of the Central Act where subsequent sale is exempt from payment of tax. Goods of the appellant along with truck No. HR 47-8777 were detained and notice u/s 31(6) of the State Act was issued by the Assistant Excise and Taxation Commissioner (AETC), Mewat, alleging "detected carrying aluminum ingots from Faridabad to Bhiwadi (Raj) (II). Failed to produce the proof of goods tax. Goods detained u/s 31(6) of the VAT Act/transaction needs verification". According to the appellant, there was no reason assigned for detention of goods u/s 31(6) of the State Act but the goods were detained as the driver failed to produce the proof of goods tax. The appellant avers that u/s 31(6) of the State Act, for mere verification of transaction, goods cannot be detained until and unless some reason is assigned for alleged attempt to evade tax due to the State. The appellant submitted before the detaining officer that the goods in question were purchased from M/s. Bharat Aluminum Co. limited, Korba (CG) and were sold to M/s. Sant Aluminum P. Limited, Bhiwadi (Raj), by endorsing the document of title to the goods. Thus the transaction fell under the provisions of section 6(2) of the Central Act. Since subsequent sales are exempt from sales tax, there cannot be any attempt to evade tax due to the State of Haryana as there is no tax of the State of Haryana involved. All the necessary documents were accompanying the goods but the same were not considered by the detaining officer. The AETC vide order dated December 20, 2007, annexure A1, levied tax and imposed penalty under the State Act. The appeal filed by the appellant against the order was dismissed by the appellate authority vide order dated April 29, 2010, annexure A2. Still not satisfied, the appellant filed appeal before the Tribunal. Vide order dated July 17, 2012, annexure A4, the Tribunal dismissed the appeal. Hence the present appeal by the appellant.

2. The learned counsel for the appellant submitted that no opportunity of cross-examination of the driver was allowed and in that eventuality, no liability could be fastened merely on the basis of the statement of the driver of the vehicle. It was also submitted that it was inter-State sales and thus there was no attempt to evade tax within the State of Haryana and thus no penalty u/s 31 of the Act could be levied.

3. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

4. The Assistant Excise and Taxation Commissioner (AETC) vide order dated December 20, 2007, annexure A1, while rejecting the contention of the appellant held that the transaction was an attempt to evade payment of tax. It was noticed as under:

The undersigned didn''t rely completely on the statement of the driver and got conducted a particular inquiry on November 25, 2007 through Shri Sukhbir Singh Kadiyan, Taxation Inspector, who along-with the driver of the vehicle visited the exact place from where the goods were loaded and the same was nothing but the godown of M/s. J.P. Engineers having two wide gates on which ''JP Engineers'' was written in bold letters with white paint. On one side of which M/s. Venus Industrial Corporation Pvt. Limited and on the other side M/s. Pross Line Firms are situated. It was about 1.30 pm when one truck No. CG-10c-1644 was being unloaded inside the gate and another truck No. UP 73A-1804 was waiting outside the gate for unloading. The driver accompanied with Mr. Kadiyan pointed out the place inside the gate from where the goods were loaded in his vehicle No. HR-47-8377 on November 23, 2007. Shri Rakesh Kumar Guard of the firm''s godown also disclosed that all the incoming trucks are owned by M/s. J.P. Engineers.

On November 27, 2007 Shri Devinder Sharma, Accounts Officer of the firm appeared, submitted the written submissions from the counsel and deposited Rs. 1,73,842 as case security and the goods were released immediately. On December 5, 2007 the dealer was served with a detailed show-cause notice through Shri Devinder Sharma for December 14, 2007. Shri Devinder Sharma again appeared and asked for copy of the statement of the driver which was provided to him on the same day and the case was adjourned to December 20, 2007 at his request.

On December 20, 2007, Shri Devinder Sharma appeared and submitted written submissions from the counsel in which it is objected that the undersigned has purely relied upon the statement of the driver which is wrong as the necessary inquiry regarding the place from where the goods were loaded was conducted on November 25, 2007 by Shri Sukhbir Singh Kadiyan, Taxation Inspector, as stated earlier, the report of which has been obtained. Thus loading of the goods from your godown in vehicle No. HR-47-8377 on November 23, 2007 clearly implies that the delivery of the goods was duly taken by you which were imported from Korba (CB) in vehicle No. HR-38N-8631 hence the goods no longer remained in transit and sale of such goods made after taking the delivery cannot be treated as ''sale in transit''.

Secondly the G.R. No. 15755 dated November 23, 2007 shows the movements of goods from Faridabad to Bhiwadi while the consignor of the goods is shown as M/s. Bharat Aluminum Co. Limited, Korba (CG) which is not correct as the above firm is situated at Korba and not at Faridabad.

In view of the above circumstances it is quite clear that the goods were imported by you from Korba (CG), the delivery of which was duly taken by you at your business premises from vehicle No. HR-38N-8631. Thereafter the same goods were sold to M/s. Sant Aluminum Pvt. Limited, Bhiwadi vide bill No. 13 dated November 23, 2007 and G.R. No. 15755 dated November 23, 2007 in vehicle No. HR-47-8377 showing the transaction as a sale in transit instead of inter-State Sale. No declaration in form VAT D-3 inward or outward was accompanied with the documents. Heard at length. No documents or evidence produced except those stated in the written submission.

Hence the documents produced with the transaction are not proper and genuine which contravenes the proviso of section 31(2) of the HVAT Act, 2003 and an attempt to evade the tax of Haryana State has been made through the present transaction.

5. The above findings were affirmed by the appellate authority, i.e., Joint Excise and Taxation Commissioner (Appeals), Faridabad vide order dated April 29, 2010, annexure A2, with the following observations:

5. I have heard both the sides in detail and perused the case file. In the present case, the respondent officer by penalty order put forward a scenario where one has to conclude that there was a definite attempt of evasion of tax by the appellant-dealer. On the other hand, the appellant in the grounds of appeal enumerated along with memorandum of appeal tried to establish that there was no attempt of evasion of the tax.

On the facts and in the circumstances of the case, I am of the view that the observations and findings of the respondent officer are legal, correct and au fait. There was clear attempt to evade the tax by showing inter-State sale as transit sale.

I find no reason to not rely upon the statement of the driver of the vehicle, who was also the incharge of the said goods at the time of checking. In his statement he categorically stated that he had loaded the goods from the godown of M/s. J.P. Engineers, Faridabad. Why a person having no/little knowledge regarding tax evasion modus operandi will speak a lie? Moreover, it cannot be assumed that he had any hostility with the appellant-dealer that is why he told lie to the respondent-officer. Importance of a written statement as documentary evidence for judicial purpose is vital and cannot be ignored/set aside without any cogent and explicit reason.

Contrary to the allegation of the appellant the respondent officer merely not relied upon the statement of the driver-cum-incharge of the goods. He also got conducted enquiry through the Taxation Inspector accompanied with the driver of the vehicle in respect of exact place from where the goods were loaded and found that the same was nothing but the godown of the appellant-dealer. The facts revealed in the enquiry were also accepted by the appellant-dealer to the extent of location and address, etc., in his written statement dated December 20, 2007 submitted before the respondent-officer.

The appellant-dealer has not come with clean hands. No declaration in form VAT D-3 inward or outward was accompanied with the documents. Secondly, the GR No. 15755 dated November 23, 2007 shows the movement of goods from Faridabad to Bhiwadi while the consignor of the goods is shown as M/s. Bharat Aluminum Company Limited, Korba (CG) which is not correct as the above firm is situated at Korba and not at Faridabad.

6. On further appeal by the appellant the Tribunal vide order dated July 17, 2012, annexure A4, while dismissing the same recorded as under:

We have heard submissions in detail from both sides and considered these and carefully gone through the documents/evidence placed on record. From the detention memo on record it is borne out that in detention memo the AETO (Enf), Mewat has stated that ''Detected carrying aluminum ingots from Faridabad to Bhiwadi (Raj) (ii) failed to produce the proof of goods tax. The goods detained u/s 31(6) of the VAT Act, transaction needs verification'' to which learned counsel had vehemently objected that u/s 31(6) of the HVAT Act goods cannot be detained for verification of the transaction. To analyse this we have to go through the provisions of section 31(6) which reads ''if the checking officer has reasons to suspect that the goods under transport are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be, 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 said person, order the unloading and detention of goods...'' Two scenarios come out from the language of this provision, first that when the goods under transport are not covered by proper and genuine documents and second that the person transporting the goods is attempting to evade payment of tax. The word used in between the two situation is ''or'' not and certainly in the first scenario when the documents are not proper and genuine the resultant consequences will be attempt to evade payment of tax which will require verification of the transaction. Hence goods were detained as per provisions of section 31(6). The AETO (Enf.) after examining the documents found that if the appellant has endorsed GR No. 18311 dated November 17, 2007 to M/s. Sant Aluminum Pvt. Limited, Bhiwadi, then there was no need of issuance of invoice No. 13 and GR No. 15755 both dated November 23, 2007. So apparently he was having doubt about the nature of transaction and he detained the goods u/s 31(6) for verification of the same.

The other issue raised and contested by the learned counsel is that all documents u/s 31(2) were with the driver-cum-person incharge of goods and the consignment squarely fell u/s 6(2) of the CST Act, i.e., sale in transit and documents also depicted like this, where no tax was involved and there could be no attempt to evade any tax. But from the perusal of penalty order and the impugned order it is borne out that even before detention it was clearly told to the driver/person incharge of goods that no VAT D-3 inward was there, so it cannot be admitted that all the required documents were with the consignment.

As far as their genuineness vis-a-vis nature of transaction, tax involved and attempt to evade it as to be seen it was emphasized by the appellant that the present consignment was sale in transit while from the perusal of documents on record we see that invoice No. 19747 and GR No. 18311 both dated November 17, 2007 show movement of goods from Korba (CG) to Faridabad with endorsement on the back side of GR by the appellant to M/s. Sant Aluminum Pvt. Limited, Bhiwadi, (Raj) which was of no use as the other set of documents, i.e., invoice No. 13 and GR No. 15755 both dated November 23, 2007 were also with the consignment which showed movement of goods from Faridabad to Bhiwadi (Raj) issued by the appellant to M/s. Sant Aluminum Pvt. Limited, Bhiwadi (Raj). If truly it would have been a ''sale in transit'' falling u/s 6(2) of the CST Act as claimed by the appellant. There was no need of preparing the second set of documents, i.e., invoice and GR dated November 23, 2007 but the presence of this second set of documents confirmed that it was not a sale in transit falling u/s 6(2) of the CST Act as the appellant had taken the delivery of goods at Faridabad for which he was required to use VAT D3 (inward). Afterwards on November 23, 2007 by preparing second set of documents this transaction was being given colour of a sale in transit which was not like this. The driver-cum-person incharge of goods also stated the fact of loading the goods from the godown of appellant at Faridabad whose statement was recorded in writing and then its contents were confirmed by the Taxation Inspector during enquiry who took him to the place from where these goods were loaded. The location and address of the place were admitted by the appellant himself in his written submissions dated November 20, 2007. From these facts on record we cannot say that it was the transporter who unloaded and loaded the goods at Faridabad, then apparently there was no need of preparing second set of documents dated November 23, 2007. From the facts on record, we see that a scheme or device to evade tax was clearly set in motion when the goods were purchased from Korba without VAT D-3 (inward) and took delivery at Faridabad and then claimed to have been sold in transit to M/s. Sant Aluminum Pvt. Limited, Bhiwadi, by endorsing the GR to him which was negated by the driver-cum-person incharge of goods of having loaded the goods in transit from the godown of the appellant at Faridabad. Otherwise also it does not seem to be true as per second set of documents dated November 23, 2007 available with the consignment at the time of checking. In fact documents could not be relied upon being not proper, complete and genuine which were prepared merely to cover the movement of goods to evade payment of tax. The appellant has failed to make out a case in his favour. In this scenario impugned order needs no interference. Appeal fails.

In view of the findings recorded by the authorities that the goods were loaded at Faridabad and were within the State of Haryana at the time when they were intercepted and moreover when there were two sets of documents, i.e., invoice and GR dated November 23, 2007, the plea of the appellant that the destination of the goods was Bhiwadi outside the State of Haryana, had rightly been rejected by them. The findings of fact cannot be said to be perverse or erroneous in any manner, as the same were recorded not on the basis of the statement of the driver but on the basis of the preliminary enquiry conducted as noticed in the assessment order. In such a situation, no question of law much less substantial arises for consideration in this appeal. Accordingly, the same is hereby dismissed.