
(2011) 09 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 62 of 2011 (O and M)

Laxmi Trading Co.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Punjab Value Added Tax Act, 2005 — Section 51(2), 51(6), 51(7), 68

Citation : (2011) 46 VST 356

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

Bench : Division Bench

Advocate : Devinder Lubana, for the Appellant;

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 April 8, 2011 passed by the Value Added Tax Tribunal (hereinafter referred to as, "the Tribunal") in Appeal (VAT) No. 22 of 2011, claiming the following substantial questions of law: (i) Whether in the facts and circumstances of the case, the impugned orders, annexures A1, A3 and A5, cannot be sustained in the eyes of law?

(ii) Whether the learned lower court can ignore their findings in other similar cases?

(iii) Whether the respondents are justified in not considering the submissions and documents and law produced by the appellant-firm?

(iv) Whether the impugned orders are liable to be set aside being arbitrary and against law?

(v) Whether the act of the respondents is discriminatory in the eyes of law?

(vi) Whether the appellant-owner can be punished for the mistake of the driver of the transport firm?

(vii) Whether the appellant-firm registered at Delhi is liable to be taxed under the Punjab VAT Act?

(viii) Whether the appellant-firm is liable to pay tax, despite the fact M/s. Karan Brothers had paid the tax and issued F form in the name of the appellant-firm?

Briefly stated, the facts necessary for adjudication as narrated in the instant appeal are that the assessee is engaged in the business of trading in refined oil in the State of Delhi and is registered under the Delhi Value Added Tax Act having TIN No. 07100254848. It entered into a consignment agreement dated August 11, 2008 with M/s. Karan Brothers of Ludhiana. On May 10, 2009, the assessee sent the goods containing 250 tins of refined oil on consignment basis vide bill No. 9 amounting to Rs. 2,12,500 bearing GR No. 050 in the name of M/s. Karan Brothers and Bill No. 10 in respect of 300 tins of refined oil of the value of Rs. 3,26,250 vide GR No. 048 in the name of M/s. Modern Impex (India). The goods were detained by the Excise and Taxation Officer on May 11, 2009 at ICC Shambu as the driver of the vehicle failed to produce the invoice although he was in possession of the same. The proceedings u/s 51(6) of the Act were initiated and the assessee of the goods was asked to produce documents. The assessee produced the documents including bill No. 9 dated May 10, 2009 for Rs. 2,12,500 covered by GR No. 50. The matter was sent to the AETC, ICC, Shambu (import) for taking further action who vide order dated May 19, 2009 imposed a penalty of Rs. 1,06,250 upon the assessee. The assessee got the goods released on furnishing of the bank guarantee to the respondents. Feeling aggrieved, the assessee filed an appeal before the appellate authority who vide order dated August 19, 2010 upheld the penalty levied u/s 51(6) of the Act. Still dissatisfied, the assessee filed an appeal before the Tribunal by depositing statutory payment of Rs. 26,563. The Tribunal vide order dated January 17, 2011 upheld the penalty and dismissed the appeal. Hence, the present appeal by the assessee.

2. We have heard learned counsel for the appellant.

3. The challenge in this appeal filed by the assessee is to an order of the Tribunal upholding the levy of penalty by the Assistant Excise and Taxation Commissioner and the first appellate authority u/s 51(7) of the Act.

4. The Tribunal on appreciation of material came to the conclusion that the assessee had left certain columns blank in the goods receipt and the driver of the vehicle did not produce the goods receipt when the same was required by the detaining officer. It was concluded by the Tribunal that the action of the assessee had resulted into an attempt to evade tax due or likely to be due by withholding or producing incomplete documents. The findings recorded by the Tribunal which are material read thus:

I have well considered the rival contentions. As mentioned in the order dated May 19, 2009, the goods receipt was produced by Munna Lal Goyal, father of the Prop, of the consignor-firm on May 13, 2009 though the goods covered by bill No. 9 were detained on May 10, 2009. It is, thus, abundantly clear that the

driver was not carrying this G. R. at the time of detention of the goods, though section 51(2) of the Act contemplates that the owner or person in-charge of goods vehicle shall carry with him, inter alia, goods receipt in the given circumstances. A glance through G. R. No. 050 relating to invoice No. 9 available in the Department's file would reveal that columns concerning freight, loading/unloading and waiting charges, total advance and balance have been left blank though similar columns in G. R. No. 048 concerning invoice No. 10 relating to other goods have been filled in. The carbon copy and counterfoil of goods receipt No. 050 in respect of invoice No. 9 have also not been shown. In these circumstances, it can be reasonably inferred that G. R. No. 050 was got manipulated later on. The driver being cognizant of the fact that he did not have G. R. in question concealed invoice No. 9, which was produced by him, when the goods were being physically verified. The driver had stated before the detaining officer that in pursuance of the directions given to him by the owner, i.e., consignor of goods, he had withheld invoice No. 9. The G. R. relating to invoice No. 9 having not been got issued, it could be expected of the owner, i.e., consignor to give such a direction to the driver.

On bill No. 9, it has been mentioned that this is a computer generated invoice. As already noticed, Central sales tax has not been charged in this bill. If the authorities had not detained the vehicle on suspicion that the goods were in excess, this bill after arrival of the goods at destination would have been deleted from the computer and the tax evaded.

5. No illegality or perversity could be shown by the learned counsel for the assessee in the impugned orders on the face of the aforesaid findings which in the opinion of this court duly justify the levy of penalty. No question of law much less a substantial question of law, thus, arises in this appeal. Accordingly, the appeal is dismissed. Since the appeal has been dismissed on merits, no order is required to be passed in the application u/s 5 of the Limitation Act for condonation of delay in filing the appeal and the same is disposed of as such.