(2010) 08 P&H CK 0459

In the Punjab And Haryana At Chandigarh

Case No : V.A.T. Revision No. 5 of 2009 (O and M)

Modi Revlon Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21(1), 5(1A)
Punjab Value Added Tax Act, 2005 — Section 68(1)

Citation : (2012) 53 VST 470

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

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; Piyush Kant Jain, Additional Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—Delay condoned. Heard on merits. This petition has been filed u/s 68(1) of the Punjab Value Added Tax Act 2005 (in short, "the Act") against the order of the Tribunal constituted under the said Act.

2. The petitioner is a registered dealer. During the assessment year 2003-04, a dispute arose with regard to turnover of certain goods claimed to be exempted on second sale. The case of the petitioner-dealer was that the goods in question were liable to be taxed at the first stage of sales and the dealer had already paid before the sale to the petitioner. The petitioner relied upon bills issued by M/s. Kamakhya Cosmetics and Pharmaceuticals Ltd., Zirakpur (in short "M/s. Kamakhya, Zirakpur") and declarations that tax had been paid in respect of the said sale. The Assessing, Authority accepted the stand of the assessee. However, the revisional authority, i.e., the Assistant Excise and Taxation Commissioner (Inspection) exercising suo motu revisional powers u/s 21(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as, "the 1948 Act") reopened the assessment and held that turnover pertained to the purchases made by the petitioner from M/s. Kamakhya at Chandigarh and thus, turnover

did not relate to second sale in the State of Punjab. On that basis, demand for additional tax was raised. The revision filed by the petitioner before the Tribunal having failed, this petition has been filed.

3. We have heard learned counsel for the parties.

4. The contention raised on behalf of the petitioner is that a plea was raised before the revisional authority as well as the Tribunal that the turnover in question represented second sales, the first-sale being made to M/s. Kamakhya, Zirakpur, which had paid the tax, provisions of section 5(1A) of the 1948 Act would apply and the petitioner was not liable to pay tax. In spite of this plea, this fact was not verified and it was assumed that the sales were made by the petitioner to M/s. Kamakhya at Chandigarh and in such a case these were first purchases in the State liable to be taxed. It was wrongly assumed that the petitioner itself mentioned that the purchases were made from Chandigarh. It was also observed that the petitioner failed to produce copies of GRs for transportation of goods at Mohali, octroi receipts and copies of declarations at the ICC. The stand of the petitioner is that the tax had already been paid and first sale in the State of Punjab had already taker place, the questions posed by the Tribunal did not arise at all In spite of the submission of the petitioner, the petitioner was not given opportunity to lead evidence on the relevant issue of first sale having already taken place at the hands of M/s. Kamakhya, Zirakpur, even though the petitioner had already furnished evidence in the form of declaration in form STXXII issued by M/s. Kamakhya, Zirakpur, correctness of which could be verified.

5. The learned counsel for the Revenue supported the addition but is unable to show any observation by the revisional authority or the Tribunal based on verification of correctness of the contention that the first sale had already taken place in favour of M/s. Kamakhya, Zirakpur as evidence by declaration in form ST-XXII (A) was already furnished by the assessee which was issued by M/s. Kamakhya, Zirakpur to the petitioner.

6. We are of the view that the assessing authority was bound to examine the said issue and if the assessing authority was satisfied that first sale was in the hands of M/s. Kamakhya, Zirakpur, and tax had been paid on the goods in question, there could not be any requirement to prove any movement of goods by the petitioner. In absence thereof, the view taken by the revisional authority and the Tribunal cannot be sustained in law.

7. Accordingly, the substantial questions of law arise and are answered in favour of the petitioner-dealer.

8. The petition is allowed. The impugned orders are quashed and matter is remanded for fresh decision on the merits in accordance with law to the Assistant Excise and Taxation Commissioner (Inspection), Mohali. The petitioner may appear before the said authority on November 29, 2010.