(2020) 02 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Vat Appeal No. 92 Of 2019

M/S Jrn Engineering Works — APPELLANT

Vs

State Of Haryana And Another — RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 36

Citation : (2020) 02 P&H CK 0036

Hon'ble Judges : Ajay Tewari, J;Avneesh Jhingan

Bench : Division Bench

Advocate : Sandeep Goyal

Final Decision : Dismissed

Judgement

Avneesh Jhingan, J

Appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (for short, 'the 2003 Act') is filed against the order dated 4.10.2017 passed by

the Haryana Tax Tribunal, Chandigarh (for short, 'the Tribunal') claiming following substantial questions of law:

â??(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in upholding the orders of lower authorities on the

ground that the driver was not carrying statutory documents though the goods in the present case have been imported from out of country and the

Custom Duty has been paid on the same?

(ii) Whether on the facts and in the circumstances of the case, the absence of Challan would result into attempt to evade tax when the Custom Duty

had duly been paid on the goods in question and other statutory documents were being carried alongwith it?

(iii) Whether on the facts and in the circumstances of the case, the order of Tribunal is perverse in nature and contrary to the documents on record

?â??

The relevant facts are that on 27.10.2012, vehicle bearing registration No. HR-46D-4085 was checked by the officers of Excise and Taxation

Department. The driver produced bill of entry from Germany to M/s New Allenberry Works, Mathura Road, Faridabad (hereinafter referred to as

'NAW'), VAT D-3 challan inward showing consigner as I.C.D. Tuglabad, New Delhi and consignee- NAW (a unit of M/s Deepak Industries Ltd.),

G.R. and handwritten slip in favour of the appellant. The driver in his statement stated that the goods were to be unloaded at the premises of the

appellant. The statement of Arun Kumar, employee of the appellant who was accompanying the goods, was also recorded stating that he was

showing way of his firm to the driver and was ignorant about the documents relating to the appellant. The goods were detained and a show cause

notice dated 27.10.2012 was issued to the appellant. Reply was filed and challan No. 2977 dated 27.10.2012 was relied upon which was produced on

12.11.2012. The stand taken was that the goods were being sent for job work to the appellant and actually belonged to NAW. No documents to

substantiate the averments were produced before the Penalising Officer. The challan produced was found not worth reliance as it was produced after

14 days of detention and it had no time of removal of goods mentioned in it. Penalty under Section 31(8) of the Act was imposed vide order dated

19.11.2012. The Appellate Authority dismissed the appeal vide order dated 7.10.2013. The appeal preferred before the Tribunal met the same fate on

4.10.2017, hence the present appeal.

Learned counsel for the appellant argued that the penalty imposed was illegal, there could have been no evasion of tax as the goods were imported

from Germany and it was accompanied by challan VAT D-3 and bill of entry. The argument is buttressed by stating that NAW could not have kept

the transaction of import outside the books of account.

The contentions raised lack merit. The documents produced showed import by NAW, the goods were moving from Tuglabad to Faridabad, as per the

handwritten slip and the statements recorded, the goods were to be delivered to the appellant directly. There was no document accompanying the goods for the said transaction i.e. transfer to the appellant. It would be worth mentioning here that the employee of the appellant was accompanying

the goods, yet he was not carrying any document for the transaction between NAW and the appellant.

The fact that the goods originated from Germany will not be of any help in the present case as there would be no tax involved in the hands of the

importer so far as import transaction is concerned but the subsequent transaction would be governed by the provisions of the Act.

There is another angle to the matter that if the goods are to be imported from outside the State of Haryana, a statutory form VAT D-3 is to be issued.

The form issued in the present case shows that it was issued by NAW and the consignee was shown as NAW. In such circumstances, the issuance

of form VAT D-3 does not ensure that the transaction between NAW and the appellant is bound to be disclosed to the department. It would have

been a different case had form VAT D-3 been issued by the appellant or at least in the column of consignee, there was some mention that the goods

are being sent to the appellant on behalf of NAW.

The stand taken by the appellant that the goods were being sent for job work was not substantiated, as no agreement to the said effect was produced.

The challan for transfer of goods was produced after a delay of 14 days, there is no mention of time of removal of goods in the challan and the same

has rightly been not found worth reliance.

There is another aspect of the matter, inspite of the fact that the goods worth `30 lacs odd were detained by the authorities, yet the principal/real

owner (as per the case of the appellant) neither came forward in the penalty proceedings nor produced evidence which was solely in its possession, to

substantiate the stand taken and the averments made.

For the reasons mentioned above, no interference is warranted in the order of the Tribunal. No question of law much less substantial question of law

arises.

The appeal is dismissed.