
(2017) 04 SHI CK 0097
In the High Court Of Himachal Pradesh
Case No : 57 of 2016

M/s. Shimla Automobile Pvt. Ltd.

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 22-04-2017

Acts Referred:

[Himachal Pradesh Value Added Tax Act, 2005](#), Section 48, Section 48(1), Section 34(7), Section 34(2A)

Citation : (2017) 04 SHI CK 0097

Hon'ble Judges : Mansoor Ahmad Mir, Tarlok Singh Chauhan

Bench : Division Bench

Advocate : Rakesh Sharma, Bhawana Dutta, Shrawan Dogra, Anup Rattan, Romesh Verma

Final Decision : Dismissed

Judgement

1. This revision petition, under section 48 (1) of Himachal Pradesh Value Added Tax Act, 2005 (for short "Act"), has been filed by the assessee/petitioner against the decision rendered by the Himachal Pradesh Tax Tribunal, Dharamshala (Camp at Shimla) on 29.12.2015, whereby it upheld the penalty levied against the petitioner under section 34 (7) whereas the penalty levied under section 34 (2-A) of the Act was ordered to be set aside. Certain facts may be noticed:

2. The petitioner is registered under the provisions of the Act and Central Sales Tax, 1956. In pursuance to demand communicated and advance payments made by the petitioner for the purchase of vehicles, the manufacturer, M/s Mahindra & Mahindra Limited on 19.8.2013 drew the following sales invoices in its favour:

Sr.No. Invoice No. Invoice date Vehicle Serial number

1. 7014338534 19/8/2013 D2G88600
2. 7014338535 19/8/2013 D2G88602
3. 7014338536 19/8/2013 D2G88601

4. 7014338590 19/8/2013 D2H31053

5. 7014338588 19/8/2013 D2H31049

6. 7014338589 19/8/2013 D2H31052

3. The petitioner was charged for transportation of the above vehicles and these were to be delivered at its business place for which the services of the transporter, respondent No.4, i.e. Mohan Tractor Private Limited were engaged. While these vehicles were on the way to Ner Chowk, Mandi, respondent N.3, i.e. Deputy Excise and Taxation Commissioner-cum-Assessing Authority on 25.8.2013 intercepted these vehicles near Ram Shahar, Tehsil Nalagarh, District Solan. On checking, it was found that one out of the aforesaid six vehicles was neither declared electronically nor crossed through any of the multi purpose Barrier (for short MPB Barrier) of the State.

4. Respondent No.3 initiated assessment proceedings for the assessment year 2013-2014 (detention dated 25.8.2013) and on the basis of the admission, made by the representative of the petitioner before it on 30.8.2013, imposed the penalty of Rs. 3,21,658/- in the following manner:

Value of Vehicle 9,19,024

Penalty u/s 34 (7) for violation of section 34 (4) of HP VAT Act 2,29,756

Penalty u/s 34 (2) (A) of HP VAT Act 91,902

Total additional demand 3,21,658/-

5. The order passed by respondent No.3 was assailed before respondent No.2, i.e. Excise and Taxation Commissioner-cum-Appellate Authority. However, the said appeal was rejected with the observations that the Assessing Authority had ensured and completed all the codal facilities. 6. The petitioner still being aggrieved by the orders passed by the authorities below preferred an appeal before the H.P. Tax Tribunal, Dharamshala (camp at Shimla), which was partly allowed by deleting the penalty under section 34 (2-A) whereas the penalty under section 34 (7) was upheld.

7. It is against these orders passed by the statutory authorities that the petitioner has filed the instant revision petition on the ground that in absence of any finding to the effect that the petitioner has attempted to evade the tax; the impugned order cannot be sustained.

8. We have heard the learned counsel for the parties and have gone through the material placed on record.

9. At the outset one needs to note the scope and ambit of the revisional jurisdiction of this Court as provided and contemplated under section 48 of the Act, which reads thus:

"48. (1) Any person aggrieved by an order made by the tribunal under sub-

section (2) of section 45 or under subsection (3) of section 46, may, within 90 days of the 85 communication of such order, apply to the High Court of Himachal Pradesh for revision of such order if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.

(2) The application for revision under sub-section (1) shall precisely state the question of law involved in the order, and it shall be competent for the High Court to formulate the question of law.

(3) Where an application under this section is pending, the High Court may, or on application, in this behalf, stay recovery of any disputed amount of tax, penalty or interest payable or refund of any amount due under the order sought to be revised:

Provided that no order for stay of recovery of such disputed amount shall remain in force for more than 30 days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(4) The application for revision under sub-section (1) or the application for stay under sub-section (3) shall be heard and decided by a bench consisting of not less than two judges.

(5) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

10. It would be evidently clear from the aforesaid provisions that this Court would only interfere with the findings recorded by the authorities below in case it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.

11. However, this is not the fact situation obtaining in the instant case as the findings recorded by the authorities below are based on categorical admission of the representative of the petitioner. This would be clearly evident from the order passed by respondent No.3 on 30.8.2013 (Annexure P-2) wherein it was observed as under:

"On 30.8.2013, present Shri Daljit Singh, Director M/s Shimla Automobiles Pvt. Ltd. Registered office Chandigarh Sector 7-C, Cabin No. 09, SCO 38 in response to the ongoing hearing of the case. He when asked to explain as why the vehicle in question has not been declared on-line or on the MPB Barrier Brotiwala or Baddi while entering into the State of H.P. He admitted that this has happened a grave mistake in the part of their office as well as the driver of the said vehicle. He also regretted that again there was a mistake on the part of the driver as he did not go to any of the MPB of HP State, which attracts penalty u/s 34 (2) (A) of the HP VAT Act, 2005. In the mean time an inquiry was conducted and it was enquired from the ETO Incharge of MPB Baddi and Barotiwala on phone whether the said vehicle has approached any of these two MPBs. The ETO Incharge after going through the details intimated on phone that this vehicle has

not approached any of these MPBs on 24.8.2013 and 25.8.2013. The said Sh. Daljit Singh admitted his mistake and expressed his readiness to pay the penalties imposed/due without seeking any more opportunity.

The case was decided as under:-

Value of Vehicle (Scorpio) as per Tax Invoice 9,19,024/-

Penalty imposed u/s 34 (7) for violation of Section 34 (4) of HP VAT Act 2,29,756/-

Penalty u/s 34 (2) (A) of HP VAT Act 2005 for not approaching any of HP MPB 91,902/-

Total Rs. 3,21,658.00

12. It is trite law that the admission is the best evidence that an opposing party can rely upon and though not conclusive is decisive of the matter, unless successfully withdrawn or proved erroneous.

13. Even while filing an appeal before respondent No.3, the petitioner has only alleged that "respondent, i.e. respondent No.4 of its own recorded the admission of mistake of the appellant and compelled the appellant to pay penalty. The appellant succumbed to the pressure of the respondent and acted as directed by the authority to secure the release of vehicle to ensure timely delivery to the customer having advance booking."

14. Evidently, the aforesaid ground was clearly an afterthought as the petitioner took no steps to explain or withdraw the admission by adducing clinching material so as to out way the admission and, therefore, learned first appellate authority committed no irregularity much less any illegality in dismissing the appeal by observing that respondent No.3 had imposed the penalty after following all the codal formalities.

15. As regards the order passed by the learned Tribunal below, it would be noticed that all the contentions raised by the petitioner were dealt with threadbare and it was only thereafter that the levy of penalty upon the petitioner under section 34 (7) of the Act was upheld and whereas the penalty under section 34 (2-A) was set aside.

16. Mr. Rakesh Sharma and Ms. Bhawana Dutta, learned counsel for the petitioner, would, however, argue that before imposing a penalty under section 34 (7) of the Act, the authorities below were required to satisfy themselves that there was an attempt of the petitioner to evade the tax and in absence of such findings, the penalty as imposed cannot be sustained.

17. Section 34 (7) of the Act reads thus:

"34 (7) - The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person-incharge of the goods carriage or vessel and shall require him to produce proper

and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceeding along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twenty-five per centum of the value of the goods but which shall not be less than fifteen per centum of the value of the goods, and in case he finds otherwise, shall order the release of the goods."

18. We find no merit in the contention raised by the petitioner for the simple reason that it was the representative of the petitioner who himself before respondent No.3 on 30.8.2013 had not only admitted his mistake but had expressed his readiness to pay the penalty imposed/due without seeking any more opportunity.

19. The petitioner had at no time approached respondent No.3 for recall of the said order or claimed that the admission so recorded was wrong or that he may be permitted to withdraw the same.

20. The findings recorded by the authorities below are pure findings of facts and no question of law arises for consideration. Accordingly, the revision petition is dismissed, leaving the parties to bear their own costs.