(2010) 09 P&H CK 0368

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 10 of 2010

M.S. Trading Company — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 3, 51(2), 51(4), 51(7), 68
Punjab Value Added Tax Ordinances — Section 3(1), 3(2)

Citation : (2010) 09 P&H CK 0368

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been filed u/s 68 of Punjab Value Added Tax Act, 2005 (in short "the Act") proposing following substantial questions of law:

I) Whether Joint Director (Investigation)-cum-DETC has jurisdiction to hear the appeals against orders passed u/s 51(7) of the VAT Act in the absence of notification issued by the State Government?

II) Whether the order passed by the Ld. Tribunal with regard to the jurisdiction of the Joint Director (Investigation)-cum-DETC is sustainable in law?

III) Whether penalty u/s 51(7)(c) of the VAT Act could be imposed when the driver has voluntarily stopped the vehicle at the ICC and produced documents pertaining to the goods loaded in the vehicle?

IV) Whether notification dated 31.03.2005 issued in exercise of powers conferred by Sub-section (1) & (2) of Section 3 of the Punjab VAT (Ordinance) stands repealed in view of Section 94 of the VAT Act, 2005 and another notification was required to be issued u/s 3 of the VAT Act, 2005?

V) Whether AETC (Mobile Wing) has the powers to impose penalty u/s 51(7) of the Punjab VAT Act, 2005 because no notification has been issued after the coming into force of the Punjab VAT Act, 2005?

VI) Whether the appellant was entitled to get rebate for the value of the goods which were declared at the ICC while getting form VAT XXXVI got generated which were duly produced before the checking officer on subsequent checking?

2. We have heard learned Counsel for the parties.

3. It is not disputed that questions I, II, IV and V are covered by order passed today in CWP No. 9580 of 2009 (Horizon Building Solution Pvt. Ltd. v. State of Punjab and Ors.).

4. As regards questions III and VI, the finding recorded by the Value Added Tax Tribunal, Punjab (in short "the Tribunal") is as under:

Here is a case where 360 cases of fire works were found in the vehicle on physical checking of goods. The goods found had been manufactured by M/s Shri Kailashwari Fireworks, Sivaksi and were covered by invoices bearing No. 15823 to 15836 issued by that firm in favour of M/s Kapurthala Trading Company, Model Town, Kapurthala. The value as per these invoices was Rs. 7,91,755/-. There was a dispatch memo also bearing No. 816 and 817 dated 24.3.2007 covering these 360 cases of fire works having been loaded from M/s Shri Kailashwari Fireworks, Sivaksi. The driver in charge of the vehicle had produced documents for 314 cases for which invoices had been issued by different parties and goods were shown to have been dispatched through M/s Galaxy Roadways and declaration in respect of these 314 had been made. Value shown was Rs. 2,14,367/-however, the goods shown in the invoices for which declaration was made at the ICC were different than the goods which were physically found in the vehicle. The goods actually found had been manufactured by M/S Shri Kailashwari Fireworks, Sivaksi. There were dispatch memos and invoices issued by that firm. However, consignee shown was M/s Kapurthala Trading Company, Model Town, Kapurthala, which was non-existence firm. Present appellant i.e. M/s M.S. Trading Company had claimed the present goods and contested the matter. As far as goods found in the vehicle are concerned, the only conclusion which could be arrived at was that declaration at the ICC was made in respect of these goods. It was with a view to attempt to evade tax especially when declaration for some different goods had been made. The value of the goods which had been in Punjab was Rs. 7,19,755/- and there had been violation of Section 51 (2) and (4) of the Punjab VAT Act in respect of these goods. It could not be treated to be case u/s 51(7)(b) of the Punjab VAT Act for 314 cases, since the goods were different, manufacturer was different consignors and consignees were also different.

5. In view of the above, the dealer had not declared value of any of the goods in respect of which attempt of evasion is alleged to be made. The finding of fact recorded by the Tribunal being not shown to be perverse, the questions proposed cannot be held to be substantial questions of law.

6. Accordingly, the appeal is dismissed.