(2000) 05 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6211 of 1999

Plastic and Chemicals Co.	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 14B

Citation : (2000) 05 P&H CK 0053

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; Gurminder Singh, for the Respondent

Judgement

N.K. Sodhi, J.—Petitioner despatched some goods from Delhi to Chanalon near Kurali in the State of Punjab through vehicle No. HR-38-C-7998. This vehicle was intercepted by the Assistant Director (Enforcement), Excise and Taxation Department, Punjab, Chandigarh, along with his supporting staff on December 11, 1998 as the officer concerned doubted the genuineness of the bills and other documents carried by the driver of the vehicle. M/s. Jauss Polymers Ltd., village Chanalon, was the consignee of the goods which were sold for a consideration of Rs. 2,07,043. Notice was issued to the consignee to appear and get the goods released. The consignee did not respond to the notice and, therefore, the matter was referred to the Deputy Director (Enforcement) for further proceedings. The Deputy Director (Enforcement) also served two notices to the consignee which also evoked no response. She, therefore, by her order dated January 29, 1999 imposed a sum of Rs. 60,000 as penalty u/s 14B(7) of the Punjab General Sales Tax Act, 1948 (for short "the Act"). It was thereafter that the petitioner learnt about the detention of the goods and approached the respondents for the release of the same. The goods were released only on the petitioner''s furnishing a bank guarantee which has since been encashed by the respondents. We are also informed that the petitioner was also made to deposit another sum of Rs. 10,000 as godown charges which according to the petitioner it was not liable to pay. It is against the order of the Deputy Director (Enforcement) that the present writ petition has been filed under article 226 of the Constitution.

2. The contention of Sh. K. L. Goyal, learned counsel for the petitioner is that the petitioner was the owner of the goods and, therefore, no order of penalty could be passed by the Deputy Director (Enforcement) without issuing any notice to it. It is further contended that since the petitioner was not a party in the proceedings before the Deputy Director (Enforcement) it could not prefer an appeal against the order dated January 29, 1999. Reference is made to the provisions of section 14B(7) of the Act and also to a Division Bench Judgment in Aero Club v. State of Punjab [1997] 104 STC 349. The learned Deputy Advocate-General, Punjab, on the other hand strenuously urged that three notices were issued, i.e., two to the consignee and one to the driver of the vehicle carrying the goods and since no one appeared in response thereto the department was justified in imposing the penalty of Rs. 60,000 in the circumstances of the case. He further contends that it is not necessary to issue any notice to the petitioner who claims to be the owner of the goods. He has referred to the definition of the term "owner" as contained in the Punjab General Sales Tax Rules, 1949 as amended in November, 1997.

3. We have given our thoughtful consideration to the rival contentions. In our view the impugned order passed by the Deputy Director (Enforcement) cannot be sustained. It has been rightly pointed out by the learned counsel for the petitioner that in terms of sub-section (7) of section 14B of the Act penalty could be levied only on the owner of the goods. The word "owner'' has been defined in the Rules to mean owner of the goods and also includes the consignor or the consignee as the case may be. In view of this definition, we are of the clear view that it was incumbent upon the department to issue notice to the petitioner before proceeding to impose a penalty under sub-section (7) of section 14B of the Act. Since no notice was issued to the consignor, the impugned order was passed in contravention of the principles of natural justice and also in contravention of the statutory provisions. We have, therefore, no hesitation in quashing the impugned order passed by the Deputy Director. The view we have taken finds support from the Division Bench judgment of this Court in Aero Club v. State of Punjab . The case is remanded to [1997] 104 STC 349 the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib for further proceedings in accordance with law. The officer is directed to afford an opportunity of hearing to the petitioner. In case it is found that the petitioner was not liable to pay any penalty, the Assistant Excise and Taxation Commissioner will direct the department to refund the godown charges recovered from the petitioner. We order accordingly. The needful shall be done within two months from the date of receipt of a copy of order. Petitioner through its counsel is directed to appear before the competent authority on June 12, 2000. There is no order as to costs.

4. Ordered accordingly.