(2013) 01 P&H CK 0228

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 52 of 2011

Prem Enterprises APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2013) 59 VST 237

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Deepak Sibal, for the Appellant; Radhika Suri, Additional Advocate-General, Punjab, for the Respondent

Judgement

Hemant Gupta, J.—In the present appeal u/s 68(2) of the Punjab Value Added Tax Act, 2005 (for short, "the Act"), the appellant has raised the following substantial questions of law:

(i) Whether the order passed by the learned Tribunal is sustainable in law ?

(ii) Whether the learned Tribunal has misinterpreted the chemistry of POP and gypsum ?

(iii) Whether the learned Tribunal has passed a non-speaking order without considering the provisions of the Punjab Value Added Tax Act, 2005 ?

(iv) Whether the tax imposed at 12.5 per cent over POP is not against the provisions of the Punjab Value Added Tax Act, 2005 ?

(v) Whether the tax should be levied over POP as per entry 16 of Schedule A or as per entries of Schedule B appendix to the Punjab Value Added Tax Act, 2005 ?

The said questions of law are said to be arising in view of the fact that the appellant has imported plaster of paris (for short, "POP") from outside the State of Punjab for sale within the State. The appellant claims the same as exempt from payment of tax on the ground that it is powdered gypsum falling under entry 16 of Schedule A of the Act.

2. The learned Excise and Taxation Commissioner in its order dated August 27, 2008 (annexure A1) rejected the contention of the appellant that gypsum has the same chemistry as that of POP and thus, free from payment of tax. It was held that the gypsum has many uses. It can be used in plaster, cement, paints and ornamental stones. The intention of entry 16 is obvious, i.e., gypsum used only in relation to improvement of quality of soil is tax-free. POP is certainly not gypsum and not tax-free.

3. The appellant filed an appeal against the said order and the Value Added Tax Tribunal, Punjab (for short, "the VAT Tribunal") vide its order dated September 14, 2009 remanded the case to the Excise and Taxation Commissioner to determine the rate of tax as if POP was not tax-free. The learned Excise and Taxation Commissioner vide its order dated March 22, 2010 returned a finding that POP is a building material, an unclassified entry, which attracts tax at 12.5 per cent. It is the said order, which was challenged before the VAT Tribunal. The VAT Tribunal affirmed the order passed by the Excise and Taxation Commissioner vide order dated November 8, 2010.

4. The learned counsel for the appellant vehemently argued that the chemical properties of gypsum and POP are same and that the only difference is the water content in POP. Therefore, it is a tax-free product falling within entry 16 of Schedule A of the Act. Alternative argument was that it falls within Sr. No. 71 of list attached to entry 58 of Schedule B, i.e., industrial inputs and packing materials. The goods falling in Schedule B attract tax at four per cent. It is contended that POP is nothing but sulphate, therefore, it would attract tax at four per cent alone.

5. On the other hand, Ms. Suri, learned Additional Advocate-General, Punjab, submitted that entry 16 of Schedule A deals with fertilizers including bio-fertilizers and organic fertilizers, gypsum, pesticides, weedicides, insecticides and fungicides. Therefore, when the gypsum is to be used as a fertilizer, in that eventuality alone, it is exempt from payment of tax. It is contended that Sr. No. 71 pertaining to sulphates; alums; peroxosulphates (persulphates) of the list appended to entry 58 of Schedule B deals with industrial inputs and packing materials, whereas POP is not used as an input for industry nor is a packing material. Consequently, it will fall within Schedule F contemplating tax at 12.5 per cent over the goods not mentioned in any other Schedule. The relevant entries from the Schedule read as under:

Schedule A

Schedule B

58. Industrial inputs and packing materials

Schedule F

List of goods taxable at 12.5 per cent

Goods not mentioned in any other Schedule

(*substituted vide notification dated September 3, 2012)

*In the said Schedule, in the heading, for the figures, sign and words ''12.5 per cent'', the figures and words ''13 per cent'' shall be substituted.

6. We have heard learned counsel for the parties and find no merit in the present appeal. The appellant has brought POP within the State of Punjab. Though the chemical properties may be similar, but the fact remains that the uses of gypsum and POP are different. Entry 16 of Schedule A exempts fertilizers from tax. The definition is inclusive which includes gypsum as a fertilizer. Entry 16 exempts fertilizer from tax, whereas POP cannot even remotely be used as a fertilizer. Therefore, POP does not fall within entry 16 of Schedule A. As a matter of fact, the order dated August 27, 2008 of the Excise and Taxation Commissioner holding that POP does not fall within entry 16 has attained finality. The VAT Tribunal has remanded the matter only to determine the rate of tax and not to decide whether the POP would fall within entry 16 or not. We do not find any illegality in the findings recorded by the Excise and Taxation Commissioner in the order dated August 27, 2008 holding that POP is not gypsum.

7. The alternative argument of the appellant is that POP is a sulphate falling at Sr. No. 71 of entry 58 of Schedule B attracting tax at four per cent. Entry 58 of Schedule B pertains to industrial inputs and packing material. POP is not an input for industry nor for packing material, therefore, it will not fall within entry 58 of Schedule B attracting rate of tax at four per cent. Once the POP does not fall within entry 16 of Schedule A or any of the items of list appended to entry 58 of Schedule B, the same is taxable as per Schedule F of the Act. Consequently, we do not find that any substantial question of law arises for consideration by this court in the present appeal. The same is accordingly dismissed.