
(2010) 08 P&H CK 0382

In the Punjab And Haryana At Chandigarh

Case No : Vat Revision No. 3 of 2009 (O and M) and Vat Revision No. 1 of 2010

Rama Nand and Sons

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5(2)
Punjab General Sales Tax Rules, 1949 — Rule 26(1)
Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2011) 43 VST 308

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

Bench : Division Bench

Advocate : K.L. Goyal and Sandeep Goyal, for the Appellant; Piyush Kant Jain, Additional Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel J.—This order will dispose of, as the both the petitions involve the same questions of facts and law.

2. VAT Revision No. 3 of 2009 has been filed against the order of the Tribunal constituted under the provisions of the Punjab VAT Act, 2005 u/s 68 of the Act. There is delay in filing the revision petition. The reason for delay, mentioned in the application for condonation of delay, is that the petitioner filed application for rectification and in the process of decision on the said application, the period of limitation expired. Having regard to facts and circumstances of the case, we condoned the delay and heard the matter on the merits.

3. The substantial questions of law claimed by the petitioner are :

(i) Whether the learned Tribunal has erred in law in upholding the order of learned AETC passed on September 25, 2006 when the said order was passed without complying with the earlier two orders passed by the Tribunal itself, whereby specific directions were given to the authority to act in a particular

manner and conduct the enquiry accordingly.

(ii) Whether the deduction u/s 5(2)(a)(ii) of the PGST Act, 1948 can be disallowed in the case of selling dealer even if it has furnished the declaration form ST-XXII obtained from purchasing dealers and has complied with rule 26(1) of the PGST Rules, 1949 ?

(iii) Whether in a case where Government Printed ST-XXII forms are issued by the purchasing dealers to the selling dealer, it is the duty of Department to find to whom these declarations have been issued and how the said dealers have accounted for those forms and no onus can be shifted upon the selling dealer on these issues ?

4. The petitioner is a dealer registered under the provisions of the Punjab General Sales Tax Act, 1948 which was replaced by the Punjab VAT Act, 2005. The assessment year in question is 1992-93. The petitioner claimed deductions on gross turnover in respect of sales to registered dealers on the strength of ST-XXII forms in accordance with statutory provisions. The said deductions were allowed by the Assessing Authority. The revisional authority exercised suo motu revisional power and set aside the deduction on the ground that the ST-XXII forms, claimed to have been given by the purchasing dealers, were not issued by the said dealers. The statements of the said purchasing dealers were recorded at the back of the petitioner, to the effect that they did not make the purchases in question. The case of the petitioner is that though the matter was earlier remanded by the Tribunal twice, i.e., on October 12, 1999 and July 19, 2005, for verifying genuineness of the sales, the said purchasing dealers were not produced for cross-examination, though the petitioner sought such an opportunity. The finding recorded to the effect that the sales were not genuine was in violation of the principles of natural justice.

5. We have heard learned counsel for the parties.

6. The learned counsel for the petitioner submits that though the petitioner sought to summon the record of the purchasing dealers and also sought opportunity to cross-examine the said dealers, the revisional authority, i.e., the Excise and Taxation Commissioner, Faridkot, did not allow this opportunity. The argument of the petitioner to this effect has been duly noted by the Tribunal, but has not been dealt with. The relevant observations of the Tribunal are as under :

The learned counsel for the applicant argued that the Tribunal vide its remand order dated July 19, 2005 passed in Revision No. 83 of 2005-06, remanded the cases to the revisional authority with specific directions to very and summon record of the purchasing dealers, record of issue of the ST-XXII forms by the Assessing Authority and also dealer to whom the forms were legally issued. The record of the applicants was also required to be summoned. But, the revisional authority again passed the same order without conducting any inquiry and summoning the record as directed by the Tribunal. They were also denied opportunity to cross-examine the dealers who denied the issuance of ST-XXII

forms. He contended that order of the Tribunal was binding on the revisional authority, but instead of abiding by the order, the revisional authority ignored it altogether and passed illegal revisional order against them.

7. After noting the said argument and the argument placed on behalf of the Department that due opportunity had been given, the Tribunal proceeded to record its finding as under :

I have considered arguments of both the parties and have gone through the facts of the case. In this case, the applicant claims that he had made sales to the registered dealers of Dhuri and was entitled to deduction u/s 5(2)(a)(ii) of the Act. The declarations submitted by the applicant were never issued by the Department to the purchasing dealers. Obviously, the forms were not from genuine source. These declaration forms were issued by the Department to the dealers of other districts, i.e., Amritsar-I, Ludhiana-I, Jalandhar-I and Faridkot and not to district Sangrur in which the business premises of the purchasing dealer fall. At the same time, the dealer of Dhuri to whom sales are shown also denied having made purchases from the applicant. Inquiries were also made from the dealer of Amritsar-I, Jalandhar-I, Ludhiana-I and Faridkot, who were actually issued the said Government printed ST-XXII forms by the Department. They denied having made purchases from the applicant. All these facts were confronted to the applicant, but he could not produce any additional evidence to prove genuineness of his claim of sales to the registered dealers of Dhuri. To substantiate his claim, he submitted Government printed ST-XXII forms said to have been obtained from the purchasing dealers of Dhuri, which were never issued to them by the Department. Obviously, ST-XXII forms furnished by the applicants in assessment against their sales to the registered dealers were not obtained from genuine source, but were managed clandestinely to claim deductions of RD sales. Even, the said purchasing dealers of Dhuri also denied the purchases. Therefore, the revisional authority had every reason to suspect genuineness of the transactions. In the light of these facts, it was for the appellant to prove genuineness of his claim of deduction u/s 5(2)(a)(ii) and the onus laid on him, which he never discharged. On the contrary, enough evidence is available on file to show that the declaration forms submitted by the applicant to claim deduction u/s 5(2)(a)(ii) were not genuine. This coupled with the facts that the purchasers have denied the said purchases from the applicants leave no doubt about mala fides of the appellant. How these, forms clandestinely reached the appellant is a matter of investigation ? But no way, the appellant can claim deduction against ingenuine ST-XXII forms.

8. The learned counsel for the petitioner submitted that the finding that the sales were not genuine or the documents furnished by the purchasing dealers were not genuine was vitiated by denial of opportunity. In the circumstances, mere denial by the said purchasing dealers was self-serving and could not be held against the petitioner. If declaration furnished by the purchasers was found to be defective, the said dealers would be liable to pay the tax.

9. The learned counsel for the Revenue is unable to show either that the concerned dealers, who were sought to be summoned, were produced or that there was no requirement in law to do so. In such situation, the finding to the effect that the petitioner failed to discharge burden of sales being genuine, cannot be sustained in law. The questions of law have to be answered in favour of the petitioner-dealer and against the Revenue.

10. Accordingly, we allow these petitions, quash the impugned orders and remand the matter to the Assistant Excise and Taxation Commissioner, Faridkot, for fresh decision on the merits in accordance with law.

11. The petitioner may appear before the said authority on November 8, 2010 for further proceedings.

12. A photocopy of this order be placed on the file of connected petition.