
(2008) 02 P&H CK 0059
In the Punjab And Haryana At Chandigarh

Shiv Shakti Exporters

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 51, 68

Citation : (2008) 13 VST 449

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The assessee has filed the present appeal u/s 68 of the Punjab Value Added Tax Act, 2005 (for brevity, "the Punjab VAT Act, 2005") challenging the order dated October 16, 2007 passed by the VAT Tribunal, Punjab, by raising the following substantial questions of law:

- (i) Whether, in the facts and circumstances of the case, an order of penalty u/s 51 of the Punjab Value Added Tax Act, 2005 could be passed when it is an admitted position that no tax was leviable on import of rice from outside the State?
- (ii) Whether, in the facts and circumstances of the case, when documents, on scrutiny, have been found proper and genuine, an order of penalty u/s 51 of the Punjab Value Added Tax Act, 2005, could be passed?
- (iii) Whether any order of penalty can be passed on the presumption that there was an attempt to evade tax?

2. Brief facts giving rise to this appeal are as under:

At about 8 a. m. in the morning on April 14, 2005 Sh HPS Gotra, Excise and Taxation Officer intercepted two trucks bearing registration Nos. HR-37-A-4808 and HR-46A-6839 loaded with rice on way to Kharar under suspicious circumstances, when he along with other staff was conducting checking u/s 51 of

the Punjab VAT Act, 2005 on Mohali-Kharar road with a view to check evasion/avoidance of the tax under the Act. The checking officer spotted these trucks near Dara Studio, Mohali and followed the same. The trucks did not stop at the Balongi ICC to give information as required u/s 51(4) of the Act *ibid*. The checking officer overtook the abovesaid vehicles and signalled these to stop near Chawla Filling Station on Balongi-Kharar road. The drivers of the vehicles were asked to produce documents relating to the goods under transport and the forms No. VAT 12 got generated at the ICC, Balongi. Neither of the drivers could produce bill/delivery challan and form No. VAT 12 pertaining to the goods under transport in the said vehicles. The drivers stated that no bill/GR was given to them and they did not give any information regarding the import of goods at the ICC, Balongi or any other nearest ICC as they had done at the behest of the owner of the goods. The statements of both the drivers were recorded. The Excise and Taxation Officer conducting the checking had reasons to doubt that the goods were not being accompanied by proper and genuine documents as required under law and therefore, the goods were detained u/s 51(6)(b) of the Act on the following grounds:

(i) The goods have been imported from Delhi by the Punjab dealer and were being taken to his business premises at Kharar via Barwala Panchkula-Chandigarh and without given any information at the ICC, Balongi or any other ICC en route.

(ii) The goods were not covered by any bill/delivery challan/goods receipt as required u/s 51(2) of the Act.

3. A notice was issued for April 15, 2005 to the owner of the goods to produce proper and genuine documents and explain the discrepancies as pointed out in the notice at Mohali office. However, Sh. Surinder Kumar Verma, proprietor of the consignee-firm appeared before the Detaining Officer on the same day, i.e., April 14, 2005 at about 10.35 a. m. at the ICC, Balongi and produced the following documents in respect of both the vehicles:

1. Bill Nos. 22435 and 22436 dated April 13, 2005 for Rs. 1,66,872 and Rs. 92,299.20 issued by M/s. Atul Kumar Anuj Kumar, Delhi in favour of M/s. Shiv Shakti Exporters, Kharar.

2. G.R. Nos. 2045 and 2046 dated April 13, 2005 of Delhi Punjab carriers from Delhi to Kharar.

3. ST XXTV A of ICC, Banur, bearing time 9:37:26 for GR Nos. 2046 and 9:39:23 for GR 2045 in respect of vehicle No. HR-37A-4808.

4. Bill No. 99 dated April 7, 2005 for Rs. 2,10,250 issued by M/s. Shri Sham Rice Mill, Chandoli (Varanasi) in favour of M/s. Shiv Shakti Importers, Kharar.

5. G.R. No. 1890 dated April 7, 2005 of Chandigarh, Ambala Transport Company from Chandoli to Kharar.

6. ST XXTV A of ICC, Banur bearing time 9:42:16 for G.R. No. 1890 in respect of vehicle No. HR-46A-6839.

4. On the basis of these documents it was submitted by the owner of the goods that there was no evasion of tax in the case and the goods had already been reported at ICC, Banur and there was no requirement of getting the same reported at ICC, Balongi.

5. The Assistant Excise and Taxation Commissioner, Ropar vide order dated April 14, 2005 imposed a penalty of Rs. 2,34,711 u/s 51(7)(c) of the Act. While passing the order dated April 14, 2005, the Additional Excise Taxation Officer, Ropar held that the owner/assessee failed to explain the fact of how he could procure the ST XXIV A from the ICC, Banur when the Checking Officer had been following both the vehicles since 8.05 a. m. and the vehicles were detained and brought to ICC, Balongi at about 8.30 a. m. and since then both the vehicles were physically stationed at the ICC, Balongi and further that an information had already been given to the Additional Excise and Taxation Officer, Ropar about the detention of the vehicles at about 9.05 a. m.

6. The Assessing Officer had also relied upon the report of the Excise and Taxation Officer which stated that the owner had admitted that the documents pertaining to both the vehicles were with him and on learning about the detention of the vehicles, he rushed to ICC, Banur and got generated the information by producing those documents at the ICC, Banur. The owner put his signatures on the order sheet in token of his having accepted the findings of the Detaining Officer and no account books or any other document or evidence was produced by the owner to prove the genuineness of the transaction. Thus, it was found by the Assessing Officer that the owner had pre-planned the procedure and process to evade the tax.

7. The appeal filed by the assessee-appellant before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, against order dated April 14, 2005 was also dismissed by holding that the drivers of the vehicles intentionally avoided the ICC to keep the transaction out of books and had reported only after the same was detained by the officers and therefore, the appellant had a plan in his mind to evade the tax.

8. The assessee further filed an appeal before the Tribunal against the orders of the Assessing Authority and Deputy Excise and Taxation Commissioner imposing penalty upon him. However, the Tribunal vide order dated October 16, 2007 dismissed the said appeal holding that the assessee intentionally avoided the ICC, Balongi to keep the transaction out of books to evade tax and the consignments were got fed into the computer at ICC, Banur in connivance with the ICC staff later on. These facts clearly prove mala fide of the appellant and the preplan of the owner to evade tax.

9. Mr. Anil KshetarpaL learned Counsel for the appellant, has vehemently argued that no penalty u/s 51(7)(c) of the Act could be imposed upon the appellant as

there was no attempt to evade the tax and the penalty has been imposed only on the ground that the goods have not been declared at Balongi barrier. According to him, the goods had already been declared at ICC, Banur and therefore, there was no requirement of again declaring the goods at Balongi barrier.

10. The learned Counsel has further argued that the authorities have erred in recording a finding that the appellant had submitted the information at ICC, Banur after the vehicles had been intercepted by the Excise and Taxation Officer. The whole story is based on conjectures and surmises and the penalty proceedings being quasi-judicial in nature should be enforced in case the evasion is proved beyond any doubt.

11. We have heard learned Counsel for the appellant and perused the record.

12. The arguments raised by the learned Counsel for the appellant are devoid of any force and are liable to be rejected. While passing the impugned order dated April 14, 2005, the Assistant Excise and Taxation Commissioner has relied upon the report of the Detaining Officer which was submitted to him while referring the case for necessary action u/s 51(7)(c) of the Act. In this report, the Detaining Officer has clearly mentioned that the owner was asked to explain the fact that how he could procure form ST XXIV A from the ICC, Banur whereas the checking officer had intercepted the vehicles at 8.05 a. m. at ICC, Balongi. The Detaining Officer has also mentioned in his report that the owner had admitted that the documents pertaining to both the vehicles were with him and on learning about the detention of the vehicles he rushed to the ICC, Banur and got generated the information by producing those documents at the ICC, Banur. The owner had also put his signatures on the order sheet in token of his having accepted the findings of the Detaining Officer and had not produced any account books/evidence to prove the genuineness of the transaction. While passing the impugned order the Assistant Excise and Taxation Commissioner has confronted the owner with the report of the Detaining Officer in reply to which he failed to give any satisfactory explanation thereto. On the basis of the said facts, the impugned order was passed by the Assessing Officer holding that the owner had attempted to evade the tax due under the Act and it was not necessary to wait till the liability to pay the tax actually arose. This finding of the Assessing Officer has been upheld by the Deputy Excise and Taxation Commissioner and the Tribunal, respectively, while passing the impugned orders. So much so, the appellant has not made any attempt to challenge the correctness of the report of the Detaining Officer before this court. There is no averment in the appeal challenging the report of the Detaining Officer nor any argument has been raised to challenge the said report of the Detaining Officer on the basis of which penalty was imposed by the Assistant Excise and Taxation Commissioner, Ropar. Counsel for the appellant had no answer to the question to the effect of how the information was generated regarding the import of goods at ICC, Banur after 9.30 a.m. when the vehicles were detained at 8.30 a.m. at Balongi. There is one more fact which has sealed the fate of the appellant, i.e., the appellant appeared

before the Detaining Officer at 10.35 a. m. at the ICC, Balongi in pursuance of the notice issued to him u/s 51(6)(b) of the Act.

12.1 In view of the abovestated facts and the finding of fact given by the Tribunal that the assessee-appellant has attempted to evade the tax by manipulating and by pre-planning a scheme or device to evade the tax and thereafter setting in motion the said scheme (feeding of information at ICC, Banur after the vehicles were detained at ICC, Balongi) and thus, attempted to evade the tax under the Act.

13. In view of the above, no substantial question of law arises for the determination by this court in the present appeal and thus, the same is dismissed.