(2012) 02 P&H CK 0287

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2840 of 2012

Shri Ram Trading Co. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 51, 51(6)(a), 51(7), 51(7)(b), 62

Citation : (2012) 49 VST 415

Hon'ble Judges : M. M. Kumar, J;Alok Singh, J

Bench : Division Bench

Advocate : Sandeep Goyal and Rishab Singla, for the Appellant; Piyush Kant join, Additional Advocate-General, Punjab, for the Respondent

Judgement

M. M. Kumar, J.—The petitioner has approached this Court with a prayer for issuance of direction to the respondents to release its goods forthwith on furnishing of surety bond dated January 28, 2012 (P4) duly attested by ETO, Pathankot on February 3, 2012. In response to notice of motion having been issued, the respondents have appeared and have placed on record a copy of an ex parte order dated February 2, 2012 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Gurdaspur. The aforesaid order has concluded that an attempt to evade/avoid tax was made by the petitioner by not reporting the paddy/rice at the barrier. The goods were meant for trade and not covered by proper/genuine documents. Accordingly, a penalty of Rs. 1,65,375 has been imposed u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005 (for brevity, "the Act") on the value of goods, which was assessed at Rs. 5,51,250. The order has made provision that the vehicle along with goods be released after the realisation of amount of penalty imposed.

2. We have heard Learned Counsel for the parties who have taken us through the provisions of section 51(7) of the Act. The Explanation to the aforesaid section reveals that once the order has been passed imposing penalty then the detained goods may be released after realization of the penalty. The Explanation reads as

under :

Explanation.--The detained goods and the vehicle shall continue to be so detained beyond the period specified in sub-sections (6) and (7), unless released by the detaining officer or enquiry officer against surety or security as provided for in these sub-sections or the penalty imposed, has been realized or the enquiry officer orders release of the detained goods after enquiry, whichever is earlier.

3. A perusal of the Explanation would show that the detained goods and vehicle would continue to be detained beyond the period of 72 hours as specified by sub-sections (6) and (7) of section 51 of the Act, unless released by the detaining officer or enquiry officer against surety or security as per the aforesaid provision or the penalty imposed, has been realized after enquiry, whichever is earlier.

4. Mr. Sandeep Goyal, Learned Counsel for the petitioner, has submitted that in order to enable the petitioner to file an appeal, a provision has been made in sub-section (5) of section 62 of the Act, which requires deposit of 25 per cent of the total amount. According to the Learned Counsel, the Explanation as well as provisions of sub-section (5) of section 62 of the Act have to be construed harmoniously and if the whole amount of penalty imposed in the order is paid then the right of appeal given to the petitioner under sub-section (5) of section 62 of the Act would be prejudiced which requires deposit of only 25 per cent.

5. However, Mr. Piyush Kant Jain, learned Additional Advocate-General, Punjab has argued that the Explanation is crystal clear and if the goods were not got released by the petitioner before passing of the order imposing some penalty then the amount of penalty has to be paid in order to succeed in getting the goods released.

6. After hearing Learned Counsel for the parties, we are of the considered view that so far as vehicle is concerned, it has to be released in accordance with provisions of section 51(6) (a) of the Act. In respect of the goods, the Explanation u/s 51(7) of the Act must be interpreted in the light of the provisions of subjection (5) of section 62 of the Act. Accordingly, the principles of harmonious construction would lead us to a conclusion that 30 per cent of the penal amount be deposited by the petitioner. It will be consistent with his right to file an appeal, which is also available on furnishing of the aforesaid amount.

7. In view of the above, the vehicle be released in accordance with the provisions of section 51(6)(a) of the Act. The goods of the petitioner be also released on deposit of 30 per cent of the penal amount. The surety bond to the satisfaction of the detaining officer be furnished. Needless to say that the petitioner shall be entitled to challenge order dated February 2, 2012 in appeal. Accordingly, the writ petition stands disposed of in the above terms.