(2012) 09 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 52 of 2012 (O and M)

State of Punjab and Another APPELLANT

Vs

ABB Limited RESPONDENT

Date of Decision : 06-09-2012

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

Citation : (2013) 58 VST 71

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Piyush Kant Jain, A.A.G., Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.

CM No. 22066-CII of 2012

1. Annexure A5--copy of agreement filed along with the application is taken on record subject to just exceptions. Civil Miscellaneous Application

No. 22066-CII of 2012 stands disposed of.

VAT Appeal No. 52 of 2012

This appeal has been preferred by the State of Punjab u/s 68(2) of the Punjab Value Added Tax Act, 2005 (in short, ""the Act"") against the order

dated November 11, 2011 passed by the Value Added Tax Tribunal, Punjab (for brevity, ""the Tribunal"") whereby the appeal filed by the

respondent against the order dated June 2, 2010, annexure A4, passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director

(Investigation), Patiala Division, Patiala in Appeal No. 4335/08-09 has been allowed.

2. Briefly, the facts as narrated in the appeal may be noticed. On January 18, 2008, two goods vehicles bearing Nos. PB-07T-1512 and PB-

07M-7209 loaded with electrical goods reached at the Information Collection Centre (ICC) of Dhabi Gujran (Patiala). On examination of the

documents shown by the drivers of the vehicles, it was found that an unregistered dealer of Punjab was importing the said goods worth Rs.

54,11,951 for trade after paying Central sales tax at the rate of 12.5 per cent. Since the goods were of high value and were meant for trade being

imported by an unregistered dealer, the goods and the vehicles were detained for further verification. After recording the statements of the drivers

of the said vehicles, detention order dated January 18, 2008 was passed u/s 51(6) of the Act and notice dated January 18, 2008 was issued to

M/s. Aeren R Festival City, Jalandhar Bye pass, Ludhiana, to appear and produce the books of account and other documents to prove the

genuineness of the transactions. When none appeared, the matter was referred to the Excise and Taxation Officer-cum-Office in-charge, ICC,

Dhabi Gujran (Patiala). The said officer issued show-cause notice to the consignee to appear and produce the books of account and other

documents. The representative of the respondent appeared but failed to prove the genuineness of the documents. The representative of M/s.

Aeren''s R Festival City, Ludhiana informed that they had not made any such import of the goods. From further inquiries, it was found that another

company by the name of M/s. Aeren R Entertaining Zone Limited was a registered dealer at Ludhiana but they also denied having made any such

purchase of goods. After examining the matter, a penalty of Rs. 16,23,587 was imposed u/s 51(7) (b) of the Act against the respondent vide order

dated January 31, 2008, annexure A3. Aggrieved by the order, the respondent filed an appeal u/s 62 of the Act before the Deputy Excise and

Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala, which was dismissed vide order dated June 2, 2010, annexure

A4. Not satisfied with the order, the respondent filed an appeal before the Tribunal. Vide order dated November 11, 2011, the appeal was

accepted by the Tribunal. Hence this appeal by the State of Punjab.

3. We have heard learned counsel for the appellants and perused the record.

4. The Tribunal has, after appreciation of material on record, come to the

conclusion that there was no error on the part of the respondent-dealer.

It was noticed that full sales tax on the transaction being inter-State sale had been paid and the element of tax in Punjab State was not involved. It

was also noticed that there was voluntary reporting at ICC and the goods were accompanied by proper and genuine documents complete in all

respects. The Tribunal also recorded that payments for the transactions were made through the banking channels, i.e., by cheques and were not

kept out of the books of account. The conclusion of the Tribunal on the aforesaid premises was that an error had crept in on the basis of which the

Department had sought to conclude that there was an attempt to evade tax. Following findings recorded by the Tribunal are relevant:

A close examination of all these documents would reveal that as a matter of fact, a project by the name of ''Festival City'' at Village Fagguwal and

Quadian, GT Road, Ludhiana is being set up. The conclusion which can be reasonable and legitimately drawn is that by way of inadvertence, the

name of the project in place of consignee''s (M/s. Aerens Entertainment Zone Limited) name has been mentioned in documents. It appears to be a

human mistake, which can be expected of anyone. This mistake or error can also be taken to be a Misdescription of the name of consignee. Such

mistake or error pales into insignificance in the face of own admission of the ETO that the transaction is in between M/s. ABB Limited (appellant)

and M/s. Aeren'' R Entertainment Zone Limited Ludhiana. It also be described to be a clerical mistake which itself would not be enough to hold

that the documents are fake or fabricated or an attempt to evade tax has been made. Man is not infallible.

There is nothing on the record to infer or conclude that the goods were meant for resale or use of manufacturing activity of the purchasing party. If

the Department had produced evidence in proof of the fact that M/s. Aerens Entertainment Zone Limited has agreed to sell this project after its

completion to a third party, then the matter would have been examined from that angle. In the absence of such evidence, there can be no escape

from the finding that the goods were meant for self-consumption as these were to be installed by the consignee in the Festival City, Ludhiana

Project. These goods having been made specifically for the project could be hardly sent by way of stock transfer to Punjab Branch. This may be the reason for paying full CST on this inter-State sale. This being a case of inter-State sale, the element of tax of Punjab State was not involved.

This is a case of voluntarily reporting at the ICC. The goods under transaction were accompanying proper and genuine documents, complete in all

respects. The payments have been made through banking channels, i.e., the cheques. In these circumstances, this transaction could not have been

kept out of account books. In all probabilities, it has to be accounted for. More to the point, it is own observation of the ETO that the consignor

and actual consignee are registered in Punjab. It is beyond comprehension as to on what basis, the ETO had proceeded to observe that the

documents covering both the transactions are false and fabricated and the goods are for trade in State of Punjab, If the documents had been of

such a nature, the transaction would have not been reported voluntarily at the ICC. There being no violation of the provisions of section 51 of the

Act in any manner, the ETO was not justified in imposing a penalty u/s 51(7) of the Act.

The findings recorded by the Tribunal have not been shown to be perverse or illegal in any manner. No substantial question of law arises. The

appeal is dismissed.

