(2011) 04 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 18 of 2011 (O and M)

State of Punjab and Another APPELLANT

Vs

Abhishek Industries Ltd. RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 8A(b)(ii)
Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2011) 46 VST 431

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

Bench : Division Bench

Advocate : Jaswinder Singh, Deputy A.G., Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue u/s 68 of the Punjab Value Added Tax Act, 2005 (for short, ""the

Act"") against the order of the Punjab VAT Tribunal dated October 4, 2010 in Appeal No. 161 of 2010, annexure A4, claiming following

substantial questions of law:

(i) Under the facts and circumstances of the case, whether the findings of the learned VAT Tribunal were perverse inasmuch as the goods

described in the bills accompanying the goods under transport did not tally with the goods described in the alleged bills of purchase?

(ii) Under the facts and circumstances of the case, whether the documents prepared for showing return of the goods in question vide bills without

charging of the applicable CST of four percent were genuine and proper and as such no attempt to evade tax was made when the same was

reported on December 27, 2003 at the Information Collection Centre?

(iii) Under the facts and circumstances of the case, whether the learned Tribunal has ignored the aspect of exigibility of the goods to CST even if

they were being returned to the original sellers by the respondent beyond a period of six months of purchase thereof as per section 8A(b)(ii) of the

Central Sales Tax Act, 1956?

(iv) Under the facts and circumstances of the case, whether the goods which were shown as being returned after a period of almost 2 years of their

purchase by the assessee/respondent were not liable for charging of any CST?

(v) Under the facts and circumstances of the case, whether the findings of the learned Tribunal are liable to be set aside, inasmuch as the

respondents attempted to evade CST by not charging it in the bills on the plea that the goods were ''rejected goods'' without having any

corresponding bills of purchase during the reporting at the ICC, and as such the documents without charging of CST were ingenuine and improper,

and thus penalty was rightly imposed u/s 14B(7)(ii) of the PGST Act, 1948?

The goods vehicle of the respondent-assessee was checked at the check-post. The stand of the assessee was that the goods being carried were

by way of return of rejected material and there was no sale involved. However, the detaining authority did not accept this submission and held that

there was attempt at evasion of tax. Accordingly, penalty of Rs. 1,83,000 was imposed u/s 14B(7) of the Punjab General Sales Tax Act 1948,

which was upheld on appeal but on further appeal, the Tribunal accepted the plea of the assessee as follows:

The consignments had been received vide notices October 17, 2001 and July 31, 2002 of M/s. Shree Dinesh Mills Ltd. The invoices showed that

these were the goods which were being returned by the appellant vide their invoice Nos. 2443 and 2444. On invoice No. 2443, it had been

mentioned that material returned was against invoice No. 55713 dated July 31, 2002. On invoice No. 2444 dated November 27, 2003, it is

mentioned that it is a rejected material. It may be that goods were being returned after two years as rejected material but it will be the Vadodra

party which had supplied the goods, to take objection regarding late return of goods, after two years. The vehicle had voluntarily reported that the

ICC purchase bills have been produced and the goods being returned duly tallied with those purchase bills. There is also certificate from M/s.

Shree Dinesh Mills Ltd., regarding return of the goods by the appellant and credit given of this return in the books of account.

From the perusal of the Department file, it would come out that apart from the invoice and GRs which the driver in charge of the vehicle was

carrying, there was a letter with the driver also from M/s. Abhishekh Industries Ltd., Ludhiana, i.e., the appellant showing that the goods were

being returned to M/s. Shree Dinesh Mills Ltd., and this is not the sale. On this, CST number of the appellant and that of the consignee had been

separately mentioned. The CST numbers were also there in the invoice. It had been explained that invoice had to be issued as some credit for

excise duty charged by M/s. Shree Dinesh Mills Ltd., Vadodra, had been taken by the appellant and this had to be reversed.

In the facts and circumstances of the case, it could not be said that there was any attempt to evade tax or the documents prepared were not proper

and genuine documents, with a view to evade tax.

2. We have heard learned counsel for the State.

3. The learned counsel for the State submits that the findings recorded by the Tribunal are perverse as the goods referred to in the bills

accompanying the vehicle did not tally with the goods mentioned in the bill of purchase. The Tribunal was, thus, not justified in not accepting the

findings of the CIT(A) to that effect.

4. We are unable to accept this submission. The Tribunal has clearly held that the goods were the rejected material and in the circumstances, when

the vehicle had voluntarily reported at the check-post and furnished the certificate of the concerned dealer, which was found to be genuine, it

cannot be held that the impugned order suffers from perversity.

5. No substantial question of law arises. The appeal is dismissed.