
(2009) 01 P&H CK 0160
In the Punjab And Haryana At Chandigarh

State of Punjab and Another

APPELLANT

Vs

City Petro

RESPONDENT

Date of Decision : 08-01-2009

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 13, 14, 2, 21, 45

Citation : (2009) 21 VST 353

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed u/s 68 of the Punjab Value Added Tax Act, 2005 (for brevity, "the VAT Act") is directed against the order dated April 11, 2008 (P5) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for brevity, "the Tribunal"), holding that the delay in filing the claim for input-tax credit should have been condoned as per the provisions of Section 14 of the VAT Act and Rule 25(1)(b) of the Punjab Value Added Tax Rules, 2005 (for brevity, "the VAT Rules").

2. Brief facts necessary for disposal of the controversy raised are that the VAT Act has come into force with effect from April 1, 2005, which has repealed the Punjab General Sales Tax Act, 1948 (for brevity, "the Sales Tax Act") with effect from March 31, 2005. It is pertinent to notice that u/s 5(1A) of the Sales Tax Act the State Government has declared various goods on which tax was levied at the first stage of sale and under proviso to the section, sale of such goods at a subsequent stage was exempted from imposition of tax, which was subject to the condition that the dealer effecting the sale at subsequent stage furnishes to the assessing authority certificate duly filled and signed by the registered dealer from whom the goods were purchased.

3. By Section 14 of the VAT Act, a provision was made to give input-tax credit in respect of stock of goods held by dealers on March 31, 2005 on which tax was

payable at the first stage of sale under the repealed Sales Tax Act. An important condition was imposed on such a claimant, namely, that it was required to furnish in the prescribed form to the designated officer a statement of tax-paid goods held in stock. Such a claim was to be submitted within 30 days, i.e., by April 30, 2005. However, the period of 30 days was later extended to 45 days vide Act No. 11 of 2006 with effect from April 24, 2006.

4. The respondent has been a dealer registered under the erstwhile Sales Tax Act and it was also granted TIN No. 03581010959 under the VAT Act for purchase and sale of petrol, diesel and lubricants, etc. The Revenue has claimed that it has failed to file statement of stock of goods taxable at the first stage of sale under the Sales Tax Act within the prescribed period of 45 days. The stock statement was received by the designated officer on August 17, 2005, who rejected the claim on the ground of delay (A1).

5. The respondent filed an appeal u/s 62(1) of the VAT Act before the Deputy Excise and Taxation Commissioner (Appeals), Jalandhar Division, Jalandhar. The appellate authority vide his order dated March 31, 2006, set aside the order of the designated officer and remanded the case to him for passing a fresh order after hearing the respondent. He was required to pass a speaking order as per law (A2).

6. After the remand, the matter was decided by the designated officer on November 30, 2006 (A3), who rejected the claim of the respondent for input-tax credit on the stock held on March 31, 2005 by recording a finding that it was filed after a period of 45 days. The appeal filed by the respondent u/s 62 of the VAT Act against the order of the designated officer was dismissed on March 29, 2007 by the appellate authority (A4). Against the order of the first appellate authority, the respondent filed further appeal before the Tribunal u/s 63 of the VAT Act. The Tribunal has accepted the claim made by the respondent vide its order dated April 11, 2008 (A5). The operative part of the order passed by the Tribunal reads thus:

Counsel for the appellant argues that in fact the ITC claim was submitted on June 18, 2005. It was argued that the Rules had in fact been published on June 21, 2005 and the claim was to be as per Rule 25(1)(b) of the Punjab VAT Rules. It is also argued that when the claim was not decided within a period of sixty days as required under Rule 25, Sub-rule (4), then a reminder had been sent on August 17, 2005. It is pointed out even the Department while issuing notice had said that there was delay of 34 days which will mean that the application submitted on June 18, 2005 had been received by the Department.

On behalf of the Department, it is contended that no application had been received on June 18, 2005 and there was in fact delay of 94 days in submitting the claim. It is also argued that the appointed day was April 1, 2005 and that designated officer has no power to extend limitation for filing the claim. It is also contended that the appellant had filed ETC claim in respect of lubricants within

time and there was no justification for filing ITC claim of petrol and diesel beyond the prescribed time.

The Punjab Value Added Tax Rules had been published on June 21, 2005. The claim was to be made as per Rule 25(1)(b). It is a fact that the Department had issued notice that there was delay of 34 days in making the claim. As such, it is to be presumed that the claim had been made on June 18, 2005 as per the contention of the appellant. When it was made before the publication of the Rules, then it would have been appropriate for the authorities below to have condoned the delay and allowed ITC claim, as per Section 14 read with Rule 25 of the Act.

7. We have heard learned State counsel and have perused the paper book with his able assistance. It is undisputed that the VAT Rules with regard to filing of input-tax credit claim were published on June 21, 2005. According to Rule 25 of the VAT Rules framed in pursuance of Section 45 of the VAT Act, a statement in respect of input-tax credit claim could have been submitted within a period of 30 days from the "appointed day", which according to Section 2(b) of the VAT Act is April 1, 2005. It would be appropriate to read Rule 25 of the VAT Rules, which is as under:

25. Input-tax credit on stock held on the appointed day.--(1) Subject to the provisions of Sub-section (3) of Section 14, the input-tax credit on goods, other than the capital goods, held in stock by a taxable person, registered under the repealed Act on the appointed day, shall be available subject to the following conditions, namely:

(a) the person claiming the input-tax credit is registered under the Act as a taxable person;

(b) such person has submitted statement of such goods within a period of thirty days from the appointed day, in such form, as may be notified.

(c) the taxable person, shall retain documents relating to the claim of the input-tax credit for a period of six years from the appointed day and shall provide such documents to the Commissioner or the designated officer for audit as and when required.

(2) Only those goods on which tax was paid under Sub-sections (1A) and (3) of Section 5 of the repealed Act, prior to the appointed day and are taxable under the Act, shall be eligible for input-tax credit.

(3) to (6).

8. A similar provision has been made by Section 14 of the VAT Act, which reads thus:

14. Input-tax credit in respect of stock held on the appointed day.--(1) A taxable person, who was registered under the repealed Act and whose registration has been continued u/s 21, shall be entitled to input-tax credit in respect of the tax

paid or payable under the repealed Act on the goods, other than capital goods, lying in stock with him on the appointed day, to such extent and in such manner and subject to such conditions, as may be prescribed. He shall, however, be eligible for input-tax credit on capital goods, if he is in the business of resale of such goods:

Provided that such stock is out of the purchases made within twelve months prior to the appointed day.

(2) The taxable person, who intends to claim input-tax credit under Sub-section (1), shall within forty-five days from the appointed day, furnish in the specified form to the designated officer, a statement of tax-paid goods held in stock.

(3) to (7).

(8) Save as otherwise provided in this section, the provisions of Section 13, shall apply mutatis mutandis to the input-tax credit claimed under this section.

9. It is further appropriate to mention that the period of 30 days was extended to 45 days by Act No. 11 of 2006 with effect from April 24, 2006. The respondent had filed its input-tax credit claim on June 18, 2005 which was before the date of publication of the VAT Rules. By virtue of the use of expression "appointed day" for counting the period of 30 days, used in Rule 25(1)(b), an argument was raised by the Revenue that the period of 30 days or 45 days have to be counted from the "appointed day", i.e., April 1, 2005. The Tribunal did not accept the aforementioned argument because by no stretch of imagination an impossible act could be permitted to be done. The VAT Rules were published on June 21, 2005 and the "appointed day" of April 1, 2005 would require a dealer to file his return within 45 days, which would expire on May 15, 2005. This could never be intention of the Legislature which has provided by Sections 13 and 14 of the VAT Act that a dealer can file his statement of input-tax credit claim subject to certain conditions. Moreover, it is a transitory statute repealing the earlier Sales Tax Act. The goods which have already suffered sales tax could not be subjected to another doze of tax.

10. It is, thus, evident that even if period of 45 days is given from the "appointed day", i.e., April 1, 2005, no dealer could have filed his input-tax credit claim nor could the claim be filed with effect from April 24, 2006 when further period of 15 days was granted from that date. It is well-settled that the law does not contemplate doing of an impossible act. The legislative intent is clear from the reading of Sections 13 and 14 of the VAT Act, which allow a dealer to claim input-tax credit subject to various other conditions. It is also clearly made out that period of 45 days is intended to be given to the dealer to make input-tax credit claim. However, the period of 45 days has to be counted from the date of publication of the VAT Rules on June 21, 2005. Any other interpretation would defeat the basic object of Sections 13 and 14 of the VAT Act and the VAT Rules. If the intention of the Legislature and the rule-making authorities is gathered from the aforesaid provisions then the period of 45 days has to be reckoned from

the date of publication of the VAT Rules. Therefore, it would be appropriate to apply the rule of purposive construction to a statute of this nature which would make the VAT Rules workable, as has been laid down in para 82 of the judgment of the honourable Supreme Court in the case of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, . Such an interpretation would be consistent with the intention of the Legislature and the rule-framing authorities and would advance the object of the statute.

11. For the reasons aforementioned, this appeal fails and the same is dismissed.

12. In view of the fact that we have dismissed the appeal on merits, we do not wish to express any opinion on the application filed with the prayer for condonation of delay.