(2012) 09 P&H CK 0247

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 107 of 2012 (O and M)

State of Punjab and Another — APPELLANT

Vs

Dhiman Industries Pvt. Limited — RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Limitation Act, 1963 — Section 5
Punjab Value Added Tax Act, 2005 — Section 51(6)(b), 51(7)(c), 68(2)

Citation : (2013) 60 VST 113

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.—The State of Punjab has preferred this appeal u/s 68(2) of the Punjab Value Added tax Act, 2005 (in short, "the Act") against the impugned order dated March 17, 2011, annexure A3, passed by the Value Added Tax Tribunal, Punjab (for brevity, "the Tribunal"), whereby the appeal filed by the respondent against the order dated February 25, 2010, annexure A2, passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala, has been allowed. Briefly, the facts as narrated in the appeal may be noticed. On February 20, 2007, vehicle No. HR-37A-1115 loaded with iron and steel goods crossed the Information Collection Centre, Shambhu (Export) at Mehmadpur, District Patiala, without furnishing the prescribed information. It was intercepted from some distance. According to the appellants, the driver of the vehicle also tried to bribe the police constable on duty at the exit point of the ICC which he did not accept and reported the matter to the Excise and Taxation Officer. On verification of documents, it was found that there was difference in the rates of the goods mentioned on the delivery slip and the invoice. The goods were not accompanied by proper and genuine documents. Accordingly, the goods were detained u/s 51(6)(b) of the Act. Notice was issued to the respondent to appear and produce the books of account and other documents to prove the genuineness of the transaction. The respondent did not appear and the case was referred to the Assistant Excise and Taxation Commissioner (AETC), who also issued notice to the respondent. Again none appeared on behalf of the respondent. Accordingly, the ABTC passed order dated February 28, 2007, annexure Al, imposing a penalty of Rs. 1,81,884 against the respondent u/s 51(7)(c) of the Act. Aggrieved by the order, the respondent filed an appeal before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala, which was dismissed vide order dated February 25, 2010, annexure A2. The respondent filed second appeal before the Tribunal. Vide order dated March 17, 2011, annexure A3, the appeal was accepted. Hence this appeal by the State of Punjab before this court.

2. The solitary question for determination is whether there was any attempt to evade tax within the ambit of section 51(7)(c) of the Act by the respondent-dealer. The Tribunal while reversing the findings of the authorities below came to the conclusion that there was no attempt to evade tax by the dealer. The findings as recorded by the Tribunal read as under: In the open court, with the aid of calculator, the requisite calculations were carried out. It eventually turned out that in the bill, Central excise has been charged separately at 16.32 per cent. When this amount was added in the rates depicted in the delivery slip, it was found that there was no difference between the rates mentioned in the delivery slip and the bill. It has all along been the case of the Department that the driver of the vehicle had made an effort in futility to grease the palm of constable Pardeep Kumar by offering him a currency note in the denomination of Rs. 500 and that the vehicle had crossed the ICC. This version too is unnatural and unbelievable. If the said constable had not succumbed to this temptation or in other words, had declined to accept the bribe money, he would have intercepted the vehicle and informed the authorities. May be that the toll tax barrier being adjacent to the ICC premises at the exit point, the toll tax receipt was got issued forcibly by extracting the said money from the pocket of the driver with a view to strengthen the case.

A glance through the statement of Gudu Singh driver would reveal that it nowhere says with specificity that he had offered the said currency note to the abovementioned constable as bribe. It has been merely mentioned in the statement that I tried to induce excise staff. If the alleged offer had verily been made to the said constable, his name would have certainly been disclosed by the driver in his statement. There are two things; if he had spurned the offer of money, he would have not allowed the vehicle to cross ICC and if had accepted it, he would have let off the vehicle. Thus, there does not seem to be any substance in the story proffered by the Department. An attempt to evade tax has not been established.

The Tribunal had come to the conclusion that there was no difference in the rates depicted in the delivery slip and the invoice after adding the Central excise at the rate of 16.32 percent in the bill. The rates in both the documents were identical. The version of the Department that driver of the vehicle had tried to grease the palm of constable, Pardeep Kumar by offering him a currency note was not accepted. The aforesaid findings have not been found to be perverse or erroneous which may call for interference by this court. Accordingly, the appeal is dismissed. Since the appeal has been dismissed on merits finding no substantial question of law, no order is required to be passed on the application for condonation of delay u/s 5 of the Limitation Act, 1963.