**(2011) 07 P&H CK 0059**

**In the Punjab And Haryana At Chandigarh**

**Case No :** VAT Appeal No. 47 of 2011

State of Punjab and Another — APPELLANT

Vs

Dolly Iron Store — RESPONDENT

**Date of Decision :** 18-07-2011

**Acts Referred:**
Punjab Value Added Tax Act, 2005 — Section 51, 51(4), 51(7)(c), 68(2)

**Citation :** (2012) 47 VST 9

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

**Bench :** Division Bench

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

**Final Decision :** Dismissed

## Judgement

Adarsh Kumar Goel, ACTG. C.J.—This appeal has been filed by the Revenue u/s 68(2) of the Punjab Value Added Tax Act, 2005 against the order dated November 26, 2010, annexure A4, passed by the VAT Tribunal proposing the following substantial questions of law :

(a) Whether the order passed by the learned Tribunal accepting the appeal is sustainable in law ?

(b) Whether the penalty u/s 51(7)(c) of the Punjab VAT Act, 2005, was correctly imposed in view of the facts and circumstances of the case ?

(c) Whether the learned Tribunal should have followed the law laid down in the case of Jain Industrial Company v. State of Punjab which was a correct decision in view of the facts and circumstances of the case ?

(d) Whether the learned Tribunal could change its opinion while deciding the appeal of the respondent in this case ?

(e) Whether documents could be produced after the detention of the goods in the absence of any such provision in section 51 of the Punjab Value Added Tax Act, 2005 and such documents could be relied upon as an afterthought ?

 

The respondent transported the goods in a vehicle from Mandi Gobindgarh to Faridabad. On the check-post, documents were produced by the driver of the vehicle. The authority on the check-post under the provisions of the Punjab Value Added Tax Act, 2005 took proceedings for alleged attempt at evasion. The designated authority recorded a finding of attempt to evade tax which was upheld by the appellate authority but on further appeal, the Tribunal held that there was no attempt to evade tax as the driver had given correct particulars of the invoice and it was a case of mistake of noting the particulars in the computer. The relevant observations of the Tribunal are as under :

On behalf of the appellant, it was argued that driver had voluntarily reported at the ICC. He had, in fact, produced the documents of both the invoices but the computer clerk generated declaration in respect of invoice No. 102 pertaining to GR No. 473. It was argued that the driver had not left the ICC and had produced the documents and declaration made before the ETO, on duty. Even otherwise, the documents of invoice No. 101 and GR No. 474 were found from the driver at that very time and there was no question of avoiding declaration u/s 51(4) of the Punjab Value Added Tax Act, 2005. Under these circumstances, it could not lead to the conclusion that there was an attempt to evade tax. It was further pointed out that exim forms of Haryana were there and the bills had been issued from a bound bill book and bill No. 101 preceded No. 102.

On behalf of the State, it was argued that the declaration in respect of goods of invoice No. 101 and GR No. 473 was not intentionally made and if the goods had left Punjab, then the transaction would have gone unaccounted and this was with a view to attempt to evade tax.

Bill book had been produced. The invoice had been issued from bound bill book. The goods of both consignment were meant for Faridabad. When declaration in respect of invoice No. 102 had been made, then invoice No. 101 could not be later on deleted from the bill book and books of account and the transaction could not go unaccounted. The driver had voluntarily reported at the ICC and the documents of invoice No. 101 and GR pertaining to that invoice were also with the driver which appears to have been taken into possession by the Department authorities before the appearance of dealer.

In facts and circumstances of the case, it could not be said that non-declaration at the ICC in respect of goods of invoice No. 101 and GR No. 473 was with a view to attempt to evade tax. As such, we find merit in this appeal. The same is accordingly accepted. Orders of the authorities below are set aside.

2. We have heard learned counsel for the appellant.

3. The learned counsel for the appellant submits that number of correct invoice was deliberately withheld and, thus, the Tribunal was not justified in holding that there is no attempt to evade tax. We are unable to accept the submission. The finding recorded by the Tribunal that there was no attempt to evade tax is certainly a plausible view. The questions raised cannot, thus, be held to be

 

substantial questions of law. The appeal is dismissed.