(2009) 04 P&H CK 0151

In the Punjab And Haryana At Chandigarh

State of Punjab and Another — APPELLANT

Vs

Hindustan Steel Industries — RESPONDENT

Date of Decision : 28-04-2009

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

Citation : (2010) 30 VST 106

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

Bench : Division Bench

Judgement

M.M. Kumar, J.—The State has filed the instant appeal u/s 68 of the Punjab Value Added Tax Act, 2005 (for brevity "the Act") challenging the order dated July 20, 2007 (annexure P3) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for brevity "the Tribunal"). The Tribunal has set aside the penalty imposed u/s 51(7)(c) of the Act after recording a categorical finding that the goods vehicle when intercepted at village Kakowal Majri, all documents as per the requirement of Section 51(7)(c) of the Act were shown by the driver. The order of the Tribunal reads as under:

A perusal of the record shows that the goods were being transported from Mandi Gobindgarh by the appellant-firm under the sale invoice dated July 14, 2005 to a firm M/s. Banarsi Dass & Sons at Hamirpur (H.P.). The copy of that bill and the GR accompanying the goods were produced by the driver at the very time of interception before the officers. During the enquiry the appellant-firm also produced copies of computerized account books, purchase bill, stock statement and the cash book, before the penalizing officer but no discrepancy in all these books had been, found and pointed out by the penalizing officer in his order. The non-production of the cash book did not warrant any inference that the transaction was non-genuine and that the sale invoice was bogus. No enquiry from the consignee, i.e., buyer of the goods was made to know if these goods were actually meant for him or not. The genuineness of the entries in the books of account produced by the appellant-firm had not been even cross checked by the penalizing officer, by visiting the factory premises of the firm and making physical verification of the stock. Under these circumstances, the alleged statement of the driver that he was adopting escape route on the instruction of the appellant-firm, did not carry much evidential (evidentiary?) value especially when he had no instructions with him in that regard in writing nor any representative of the appellant-firm was accompanying him in the truck at that time. The appellant-firm had no control on his movement and had no motive to advise him to adopt escape route especially when in the invoice issued by the firm the tax-at the appropriate rate charged on the sale of the goods from the buyer at Hamirpur in Himachal Pradesh was duly recorded. If the tax had not been charged and the invoice was found to be non-genuine, in that event that statement of the driver regarding the adoption of the escaped route at the instance of the owner, could help the Department in proving the attempt to evade the tax on the part of the appellant-firm but not in the present circumstances detailed above.

2. It is, thus, evident that a copy of sale invoice and GR accompanying the goods were produced by the driver at the very time of interception by the mobile wing. The computerized account books, purchase bill, stock statement and the cash book were also produced by the respondent-firm before the penalizing officer but no discrepancies could be ascertained. It has been held that non-production of cash book did not warrant any inference that the transaction was not genuine and that the sale invoice was bogus. No enquiry from the consignee, i.e., buyer of the goods was made to ascertain if these goods were actually meant for him or not. The Tribunal has concluded that in the absence of any evidence regarding non-payment of tax, merely avoiding of route does not constitute basis for the Revenue to conclude that the attempt of evasion must be presumed the moment the driver of the vehicle deviated from a particular route.

3. We have heard learned Counsel for the parties at some length and find that no case for interference is made out. The findings of fact recorded by the Tribunal in unequivocal terms show that all the documents as contemplated by Section 51(7)(c) of the Act were produced before the mobile wing or the penalizing officer. It has also been found as a fact that no discrepancy could be ascertained from those documents of computer account books, purchase bill, stock statement and the cash book which were produced by the respondent-Department before the penalizing officer. Nothing has come on record to presume that the transaction was not genuine and that the sale invoice was bogus. The Tribunal has further found that enquiry from the consignor could have been made to ascertain if the goods were actually meant for him, which was not made. In the absence of any evidence with regard to evasion of tax it cannot be concluded that mere change of route would lead to an inference that there was an attempt to evade tax. We are further of the view that the route has not necessarily been altered because if the goods vehicle had commenced its journey from Mandi Gobindgarh it was bound to cross Ludhiana-Phagwara-Nawanshahar-Balachaur. There was no necessity for the goods vehicle to reach Ropar. Therefore, we are of the view that

in the face of the aforesaid findings of fact no substantial question of law would emerge from the order of the Tribunal u/s 68(1) of the Act warranting admission of the appeal. Accordingly the appeal fails and the same is dismissed.

4. In view of the dismissal of the appeal on merits, we do not feel the necessity of passing any order on the application seeking condonation of delay in filing the appeal.