(2009) 11 P&H CK 0073

In the Punjab And Haryana At Chandigarh

State of Punjab and Another APPELLANT

Vs

Kalsi Pipes Private Ltd. RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2010) 29 VST 492

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The State of Punjab has filed the instant appeal u/s 68(2) of the Punjab Value Added Tax Act, 2005 challenging order dated April 23, 2009 (A3) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for brevity, "the Tribunal"). The Tribunal has set aside the order passed by the appellate authority in Appeal No. 49 of 2008-09 filed u/s 20(2) of the Punjab General Sales Tax Act, 1948. The appellant/Revenue has claimed that substantial question of law would emerge from the order of the Tribunal which warrants determination by this Court. It is pertinent to mention that the dealer-respondent has made a claim for refund of Rs. 5,13,708 claiming that the amount was within the exempted limit and the tax to the aforesaid extent was erroneously deposited as it felt that exemption had exhausted itself. The Tribunal after noticing various bills came to the conclusion that the rate which was charged by the dealer-respondent was the same after February 5, 2001 which did not include the element of tax. The aforesaid findings of the Tribunal are discernible from the following extract:

...The assessing authority had noted that although the exemption limit was available to the dealer to this extent still refund cannot be allowed on the ground of undue enrichment. However, no discrepancy in the amount of tax was found and it was found that there was excess paid tax amounting to Rs. 5,13,708 which could not be refunded on the ground of unjust enrichment. However, the fact remains that for the sales starting from January 25, 2001 onwards, the rate being charged was Rs. 48.50 per kg., which was including of tax. This rate continued after February 5, 2001 also for quite long time and the sale was at this rate inclusive of tax. However, after calculating the sale amount at that rate then sale amount was being reduced to the extent of tax on one side of the bill and Punjab tax and cess was being shown separately and total amount of the bill remained the same which means that this tax was not being charged from the customer but was just shown for the purpose of calculations after February 5, 2001 and therefore appears to have been paid in the treasury feeling that exemption limit exhausted on February 5, 2001 when bill No. 650 was made.

2. We repeatedly asked the learned State counsel as to how the finding of fact would be vitiated when the rate of Rs. 48.50 has been charged even in respect of the period for which refund amount has been claimed. We also asked the learned Counsel to substantiate how it would amount to undue enrichment when the dealer-respondent has not collected tax from the third party. There has not been any satisfactory explanation. The assessing officer as well as the appellate authority are presumed to have gone through the books of account and the entry of Rs. 48.50 must have been duly reflected. There is no whisper in the grounds of appeal alleging anything to the contrary which lead to the conclusion that the findings recorded by the Tribunal are pure findings of fact which would not give rise to a substantive question of law. Therefore, the appeal does not warrant admission. Dismissed.