(2011) 08 P&H CK 0206

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 54 of 2011 (O and M)

State of Punjab and Another — APPELLANT

Vs

Shree Ram Panels — RESPONDENT

Date of Decision : 30-08-2011

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

Citation : (2011) 46 VST 424

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

Ajay Kumar Mittal, J.—This appeal has been filed by the Revenue u/s 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated November 15, 2010 passed by the Value Added Tax Tribunal (hereinafter referred to as, "the Tribunal") in Appeal (VAT) No. 176 of 2010, claiming the following substantial questions of law: (a) Whether the findings of the learned Tribunal holding that non-reporting at the ICC and not making declaration in the prescribed form could not lead to the conclusion that there was violation of section 51(4) of the Punjab Value Added Tax Act, 2005 with a view to do an attempt to evade tax are correct in the facts and circumstances of the case?

(b) Whether it was mandatory on the part of the drivers of the vehicles to voluntarily stop at the ICC and give information of the inter-State transaction for getting form VAT XXXVI generated and by not doing so, an attempt to evade the tax was made?

(c) Whether penalty was correctly imposed u/s 51(7)(c) of the Punjab Value Added Tax Act, 2005 for making an attempt to evade the tax by not giving the information of the transaction even though the goods were sent for loading in the railway wagon in the State of Punjab?

(d) Whether the learned Tribunal has failed to consider the law laid down by this honourable High Court that penalty is to be imposed for making an attempt to evade the tax especially when the documents were recovered from the drivers after getting the vehicles stopped when they failed to give information of the transaction at the ICC?

Put shortly, the facts of the case are that the assessee is a partnership firm and is engaged in the business of manufacturing of plywood, board, etc., having TIN No. 03731130623 and is registered under the Act. It is effecting sales of its products to the dealers within and outside the State of Punjab. The assessee had sold goods to M/s. Sharp Ply (India) Pvt. Ltd., Bangalore, a dealer duly registered under the local and Central sales tax laws of that State. The containers were despatched in vehicles bearing registration Nos. PB-08N-9905 and PB-08AV-9032 along with invoice Nos. 318 and 319 dated October 13, 2008 for the amount of Rs. 5,61,649 and 5,61,649, respectively and the goods receipts Nos. 243 and 244 dated October 13, 2008 of M/s. Kamal Kiran Road Carriers, Yamuna Nagar with destination from Shahpur to Dappar to Bangalore. The said vehicles were checked and detained by the authorities of ICC, Banur on the basis that the drivers of the vehicles had failed to furnish information at the ICC before exit from the State of Punjab. A notice was issued to the owner of the goods for appearance on October 15, 2008. On October 16, 2008, the goods were got released by the assessee against bank guarantee of Rs. 5,61,649. The detaining officer submitted the case to the ETO-cum-Officer-in-charge, ICC Banur for initiating action u/s 51(7)(c) of the Act. To afford an opportunity to the consignor, notice u/s 51(7)(c) of the Act was issued for October 21, 2008 to prove the genuineness of the transaction and reasons for not reporting the transaction at the ICC as required u/s 51(4) of the Act. After hearing the consignor, the ETO-cum-Officer-in-charge ICC, Banur vide order dated October 22, 2008 imposed a penalty of Rs. 5,61,649 u/s 51(7)(c) of the Act by observing that an attempt was made to evade tax. The assessee filed an appeal before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Enforcement), Patiala Division, Patiala who vide order dated January 7, 2010 upheld the order of penalty and dismissed the appeal. Feeling dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated November 15, 2010 allowed the appeal and set aside the penalty order. Hence, the present appeal.

2. We have heard learned counsel for the appellants.

3. The Tribunal while adjudicating the appeal filed by the assessee had recorded a finding that the driver of the vehicle was in possession of goods receipts along with invoices and produced the same. It was noticed that the goods were to go to Dappar by road and were to be loaded in the railway. It was also observed that the area from where the vehicle had originated, i.e., Shahpur to Dappar, fell within the State of Punjab. On the basis of the aforesaid finding, the Tribunal had concluded that there was no attempt on the part of the assessee to evade tax due or likely to be due. The findings recorded by the Tribunal read thus:

The drivers incharge of the vehicle had GRs and invoices with them. Goods were to be loaded in the Railway from Dappar but were to go to Dappar by road. All the area from Shahpur to Dappar falls within Punjab. On the invoice, container number and seal used on the container was mentioned. The goods were to go in the same container after those were put on railway wagons. CST as applicable had been charged. C forms have also been received. In the facts and circumstances of the case, I am of the view that mere non-reporting at the ICC, Banur and not making declaration in the prescribed form could not lead to the conclusion that there was violation of section 51(4) of the Punjab Value Added Tax Act with a view to do an attempt to evade tax. As such, this appeal is accepted. Orders of the authorities below are set aside.

4. In view of the aforesaid findings, which could not be shown to be perverse in any manner by the learned counsel for the appellants, no substantial question of law, as claimed, arises in this appeal. The appeal is, therefore, dismissed. Since the appeal has been dismissed on the merits, no order is required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

