(2010) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 35 of 2009

State of Punjab and Another APPELLANT

Vs

System Protections RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2)
Punjab General Sales Tax Act, 1948 — Section 14B(2)
Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2011) 43 VST 171

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel J.—This appeal has been preferred by the State of Punjab u/s 68(2) of the Punjab Value Added Tax Act, 2005 (the VAT Act) against order dated January 29, 2009, annexure A5, passed by the VAT Tribunal, proposing to raise the following substantial questions of law :

(i) Whether the penalty was correctly imposed by the AETC when M/s. Nokia India Pvt. Limited, Zirakpur has shown the sale prior to the purchase of goods in question and the respondent failed to explain the discrepancies in the documents ?

(ii) Whether learned Tribunal has committed error in setting aside the penalty order by ignoring the grounds on which penalty was imposed by the penalty imposing officer ?

(iii) Whether the order passed by the learned Tribunal is sustainable in law under the facts and circumstances of the case ?

(iv) Whether the goods in question were covered with proper and genuine documents and an attempt to evade the tax under the PGST Act was made by showing the sale of the goods in transit and covered u/s 3(b) of the CST Act ?

2. At the time of checking at the check-post in Punjab, goods were detained u/s 14B(2) of the Punjab General Sales Tax Act, 1948 (1948 Act) and penalty was imposed on the allegation that the respondent, who is a dealer of Delhi, made an attempt to evade tax. The goods were in transit being carried in a vehicle hired by the respondent. The stand of the respondent was that they manufactured the goods and sold the same to M/s. GTL Limited, Mumbai (GTL) who in turn sold it to M/s. India Wireless Technology Limited, Hyderabad (IWTL), who further sold them to M/s. Nokia India (P) Limited (Nokia) in Punjab. The representatives of Nokia and GTL and Harish Chand, employee of the respondent-assessee also appeared and confirmed these facts. However, the plea of sale to GTL, IWTL and then to Nokia was not accepted. The finding of the detaining authority was affirmed on appeal but the Tribunal accepted the plea of the assessee. It was held that there was sale during transit by Nokia to BSNL. Names of the intervening parties were duly mentioned in the document and ultimate consignee was the BSNL. The finding recorded by the Tribunal is as under :

From the documents which driver in charge of the vehicle was carrying, it would come out that nothing has been concealed and the names of the intervening parties had been mentioned. The ultimate consignee was BSNL but it was in the account of Nokia India Pvt. Limited, account of IWTL and account of GTL Limited. GR was endorsed by GTL to IWTL, IWTL to Nokia and Nokia to BSNL, who ultimately took delivery. The driver in charge of the vehicle had voluntarily reported at the ICC. Tax as required on inter-State sale had been charged or paid in Delhi State.

3. We have heard learned counsel for the parties and perused the record.

4. The learned counsel for the appellants submitted that dates of bills show an attempt of evasion. The documents seized at the time of checking were as under :

(i) Bill Nos. 5545 and 5546 dated February 11, 2005 for Rs. 2,14,000 each issued by M/s. System Protection, Delhi in favour of GTL Limited, Mumbai with delivery address, Ludhiana Telephone Exchange, Ludhiana and Patiala.

(ii) Invoice No. IWTL/HYD/T/2004-05/PJ1022 and 1020 dated February 8, 2005 for Rs. 2,53,760 each issued by M/s. India Wireless Technology Limited, Hyderabad in favour of M/s. Nokia India (P) Limited, Village Pabhat, Near Zirakpur with delivery address BSNL, Patiala.

(iii) Delivery Challan No. PBTC-IWTL-050209B and 050209C dated February 9, 2005 for Rs. 4,32,886 each issued by Nokia India (P) Limited, Village Pabhat, Zirakpur in favour of BSNL, Ludhiana and Patiala, respectively.

(iv) GR No. 975 dated February 14, 2005 from Delhi to Ludhiana and GR No. 976 dated February 14, 2005 from Delhi to Patiala of Singh Transport Goods Carrier.

5. The above shows that the first sale was between respondent and GTL while the second sale was between IWTL and Nokia. First bill dated February 11, 2005

is in favour of GTL. The second bill dated February 8, 2005 is by IWTL to Nokia and delivery challan dated February 9, 2005 has been issued by Nokia and GR dated February 14, 2005 is from Delhi to Ludhiana and from Delhi to Patiala. If the respondent had already sold the goods, there was no question of GR being issued by the respondent. Mere fact that GR has been issued on a later date while delivery challan has been issued by Nokia on an earlier date could not be enough to infer attempt to evade tax. It is admitted that the goods were checked at the check-post and there were multiple transactions with the consent of concerned parties and finally, it was the respondent who was to effect the delivery of goods to BSNL. In these circumstances, the finding recorded by the Tribunal that there was no attempt to evade tax cannot be held to be perverse. Moreover, the Tribunal has given liberty to the assessing authority to look into the issue whether sale by Nokia to BSNL was sale in transit u/s 6(2) of the Central Sales Tax Act, 1956 or intra-State sale liable to tax under the local law.

6. In above circumstances, the questions proposed are answered against the Department and in favour of the dealer.

7. The appeal is accordingly dismissed.

