(2013) 10 P&H CK 0285

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 5 of 2010 (O and M)

State of Punjab and Another APPELLANT

Vs

T.R. Industries RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 45 GST 150 : (2014) 67 VST 258

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : N.K. Verma, Deputy A.G., Punjab, for the Appellant; K.L. Goyal and Sandeep Goyal, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the State u/s 68(2) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated May 22, 2009 (annexure A3) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal"). The appeal was admitted vide order dated May 17, 2010 for consideration of questions Nos. (II) and (III) which are as under:

(II) Whether the Tribunal has rightly interpreted the provisions of section 51(7)(b) of the VAT Act, 2005 which provides for imposition of penalty when an attempt to evade the tax is proved and the AETC has imposed penalty by holding that it was the case of reuse of the invoice?

(III) Whether the penalty was rightly imposed u/s 51(7)(b) of the Act on the consignor who has reused the invoice?

The facts necessary for adjudication of the present appeal as narrated therein are that the assessee sent a consignment of steel pipes and tubes from Moga to Mandi Gobindgarh through truck No. PB-10P-9945 with invoice No. 238 dated January 9, 2007 for sale to M/s. National Steel Tubes, Naraina, Delhi, along with GR No. 3003 dated January 9, 2007 of M/s. Swarn Goods Carrier, Moga. The vehicle loaded with the goods was checked by the designated officer, Fatehgarh

Sahib on January 11, 2007 at 6.00 am at Mandi Gobindgarh. After verification, it was found that the tax was being evaded. Accordingly, the documents and the goods were detained u/s 51(6)(a) of the Act and notice was issued to the owner of the goods. On January 25, 2007, the detaining officer sent the case to the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib, for taking action u/s 51(7)(b) of the Act who vide order dated January 25, 2007 (annexure A1) imposed a penalty of Rs. 1,08,052 holding that an attempt to evade the tax was made. Feeling aggrieved, the assessee filed an appeal u/s 62 of the Act before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana. The said appeal was dismissed vide order dated April 30, 2008 (annexure A2). Against the order dated April 30, 2008 (annexure A2), the assessee approached the Tribunal by way of an appeal. The Tribunal vide order dated May 22, 2009 (annexure A3) allowed the appeal holding that neither the documents were ingenuine nor an attempt was made to evade tax. Hence, the present VAT appeal.

2. The learned State counsel submitted that there was an attempt to evade tax on the part of the respondent-assessee and, therefore, the penalty imposed u/s 51(7)(b) of the Act amounting to Rs. 1,08,052 vide order dated January 25, 2007 by the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib and upheld by the Deputy Excise and Taxation Commissioner (Appeal) vide order dated April 30, 2008 was justified. The Tribunal while reversing the said orders had decided the appeal against the material on record. Learned State counsel contended that the assessee had sent consignment of steel pipes and tubes from Moga to Mandi Gobindgarh through Truck No. FB-10P-9945 with Invoice No. 238 dated January 9, 2007 showing sale to M/s. National Steel Tubes, Naraina, Delhi along with GR No. 3003 dated January 9, 2007 of M/s. Swam Goods Carrier, Moga, in which the names of the consignor and the consignee were as in the invoice but destination instead of Delhi was shown from Moga to Mandi Gobindgarh. It was argued that the invoice clearly specified destination from Moga to Mandi Gobindgarh whereas the goods were said to be sent for a dealer at Delhi. According to the learned counsel, the goods having been intercepted at Mandi Gobindgarh, the said defence was taken by the assessee whereas the goods were meant for sale in Mandi Gobindgarh and thereby an effort was there to evade payment of VAT which was payable in the State of Punjab.

3. On the other hand, learned counsel for the respondent-assessee submitted that the Tribunal on appreciation of material had recorded a finding and this court in appeal u/s 68 of the Act would not disturb the finding of fact unless it was shown to be erroneous or perverse. It was argued that the goods were booked from Moga for Delhi via Mandi Gobindgarh as the freight by adopting the aforesaid process was less about Rs. 7,000. It was to remain competitive in the market that this system was adopted. It was contended that on earlier occasion as well in 2006 similar modus operandi adopted was accepted.

4. After hearing learned counsel for the parties and perusing the record, we do

not find any merit in the appeal. The Tribunal after appreciating the material had come to the following conclusion:

On behalf of the appellant, copies of documents of earlier sales of the parties in Jaipur on June 22, 2006 were shown. In that case also the GR was of Mandi Gobindgarh and then there was another GR from Mandi Gobindgarh to Jaipur and it was mentioned there even. There the goods had been loaded after uploading from another truck, the freight charges was Rs. 2,500 from Moga to Mandi Gobindgarh, Rs. 8,000 from Mandi Gobindgarh to Jaipur. There was another bill also dated September 2, 2006 for sale to a party of Jaipur where again there was GR from Moga to Mandi Gobindgarh. Copies of ICC declarations had also been filed to show that the goods earlier set on September 2, 2006 had actually been declared at the ICC while leaving the State of Punjab in the other truck, in which these transactions were being shown as intra-State sale and even C forms were obtained. It was contended on behalf of the appellant that if the goods were to be sold under hand in Mandi Gobindgarh, then these could be sold on January 9, 2007 itself and there was no need to wait another truck for unloading from the earlier truck and then loading in the other truck, from Mandi Gobindgarh to Delhi.

The fact remains that bill number, value of goods and name of consignor and consignee with TIN number had been mentioned in the GR. Similarly the GR number and date of the GR was mentioned in the invoice which the driver had produced immediately on interception. Words ''home delivery'' written in the GR do not assume much importance as the GR was only from Moga to Mandi Gobindgarh and consignee was to Delhi. The goods were 11 ton, 970 kgs., and even if the dealer saves Rs. 2,000 or 3,000 in freight while sending the goods, the difference may be Rs. 200 and Rs. 300 per ton and may be significant for quoting rates, etc., for sale of goods.

In the facts and circumstances of the case, it cannot be said that either the documents were not genuine or there was an attempt to evade tax, on the part of the appellant.

From the above, it emerges that the bill number, value of goods, names of consignee and consignor were mentioned on the GR. The destination of goods was from Moga to Delhi via Mandi Gobindgarh in order to reduce the freight charges to remain competitive in the market. In such circumstances, the Tribunal recorded that there was no attempt to evade tax and the documents could not be said to be ingenuine. The aforesaid finding of fact in which no perversity could be pointed out, no ground for interference by this court is called for. Accordingly, the substantial questions of law are answered against the appellants-State and in favour of the assessee. Finding no merit in the appeal, the same is hereby dismissed.

