(2011) 04 P&H CK 0331

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 14 of 2011 (O and M)

State of Punjab — APPELLANT

Vs

Gopal Krishan Chemicals — RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 51(2), 51(7)(b), 51(7)(c), 68

Citation : (2012) 51 VST 38

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

Bench : Division Bench

Advocate : Jaswinder Singh, Deputy A.G., Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel J.—This appeal has been preferred by the Revenue u/s 68 of the Punjab Value Added Tax Act, 2005 (for short, "the Act") against the order of the; Punjab VAT Tribunal dated September 23, 2010, annexure A4, claiming following substantial questions of law: (i) Having regard to the facts and circumstances of the case, whether non-reporting of the documents and non-giving of the information as required u/s 51(2) and (4) of the Punjab VAT Act by the respondent and adoption of an escape route, are not indicative of their intention to attempt to evade or avoid tax and as such penalty u/s 51(7)(b) was leviable against them ?

(ii) Whether, in the facts and circumstances of the case, the order, annexure A4, of the learned Tribunal is bad in law as it has failed to appreciate that the books of account produced to show the transaction in question could be prepared/ completed subsequently because the respondent had failed in their attempt to avoid interception while transporting the goods out of the State of Punjab ?

(iii) Whether, in the facts and circumstances of the case, the order of the learned Tribunal and findings of facts are perverse and as such is liable to be set aside ?

The vehicle of the assessee was intercepted at the check-post on the allegation that there was an attempt at evasion of tax. On search, the documents were found to be ingenuine and improper and a show-cause notice was issued. The designated officer passed an order levying penalty u/s 51(7)(c) of the Act which was upheld by the appellate authority. However, on further appeal, the Tribunal set aside the same as follows :

I have gone through the arguments of counsel for the appellant and counsel for the State and perused the record. Account books and other relevant documents produced by the appellant in the court today. No defect has been pointed out by the detaining officer in the impounded invoice copy of the invoice produced by the appellant during the course of examination before the detaining officer. All the account books were produced by the appellant, i.e., purchase voucher, account books, purchase account books, sale account books and bank account, etc., for examination before the detaining officer. No defect was pointed out in the account books with the detained documents. Counsel for the State was not able to prove as to how the detaining officer had a jurisdiction to intercept the vehicle at a point other than the ICC (Export), Shambhu at Mehmadpur place of his posting.

I have examined the account books produced before me in the court today. They appear to be maintained to the normal course of business. Penalty has been imposed without establishing an attempt to evade the payment of tax. Penalty imposed by the lower authorities is set aside. The appeal is accepted.

2. The above finding has not been shown in any manner to be perverse or unreasonable. In absence of attempt at evasion, order of the Tribunal setting aside the penalty cannot be held to be illegal.

3. No substantial question of law arises. The appeal is dismissed.

