(2016) 08 P&H CK 0358

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 73 of 2009 (O&M)

State of Punjab — APPELLANT

Vs

M/s Indo Arya Central Transport Ltd. — RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 51

Citation : (2016) 4 PLR 146

Hon'ble Judges : Mr. Rajesh Bindal and Mr. Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Mr. Piyush Bansal, DAG Punjab, for the Appellant-State; Mr. Vikram Anand, Advocate, for the Respondent No. 1; Mr. Rishabh Kapoor, Advocate for Mr. Saurabh Kapoor, Advocate, for the Respondent No. 2; Mr. K.L. Goyal, Senior Advocate with Mr. Sandeep Goyal,

Final Decision : Dismissed

Judgement

Mr. Rajesh Bindal, J.—The State has filed the present appeal raising the following substantial questions of law, arising out of order dated 8.6.2009 passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for short ''the Tribunal''):

(i) Whether the order of the Tribunal is in accordance with law settled by this Hon''ble High Court in case of Senior Divisional Commercial Manager v. State of Punjab and others?

(ii) Whether the order of the Tribunal is in accordance with law settled by this Hon''ble High Court in case of Mool Chand Chunni Lal v. Manmohan Singh, AETO (1977) 40-STC- 238?

(iii) Whether the Tribunal has rightly interpreted the provisions of Section 6 (2) of the CST Act, 1956 when no document of transfer of title of the goods during the transit of the consignments was produced by the Respondent?

(iv) Whether the penalty was rightly imposed under Section 51 (7) of the Act on the transporter when the goods were owned by the transport company itself and were got released by furnishing security in accordance with provision of law?

(v) Whether the Tribunal has made Section 51(7) redundant by referring the case to the concerned Assessing Authority?

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

2. The facts of the case as are evident from the order passed by the Tribunal are that the goods train rake carrying pig iron was checked at Railway Station, Batala, on 16.10.2007 by the ETO (MW) Jalandhar. The goods were found to be pig iron. These were being transported from Kalem (Goa) to Batala Railway Station in 34 flat wagons, having 2 containers on each vehicle weighing 27.5 M.T. each.

3. On demand, owner of the goods produced 12RRs bearing Nos.710443 to 710454 dated 09.10.2007 showing consignor to be M/s Indo Arya Central Transport Ltd. Kalem and consignee M/s Indo Arya Central Transport Ltd. Batala. Opining that the goods were not accompanied by proper and genuine documents and there was an attempt to evade tax, after hearing the parties, the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar, vide order dated 02.11.2007 imposed penalty of Rs. 90,63,406/- under Section 51(6)(a) of the Punjab VAT Act, 2005 (for short ''the Act'').

4. Aggrieved against the order, the respondent No.1 preferred appeal before the Deputy Excise and Taxation Commissioner (Appeal), Jalandhar, who vide order dated 29.2.2008 dismissed the same. That order was challenged by respondent No.1 before the Tribunal, who vide order dated 8.6.2009, accepted the appeal and set aside the penalty. It is the aforesaid order which has been impugned in the present appeal by the State.

5. Learned counsel for the State submitted that the Tribunal had gone wrong in deciding the issue that the provisions of Section 51 could not be invoked and the goods could not have been detained, the same being transported through railways. While referring to the provisions of Section 51 of the Act read with definition of goods carriage as contained in Section 2 (l) thereof, it was submitted that the exclusion clause in the definition of goods vehicles is relating to the vehicle running on fixed rails which is used only in a factory. The word ''''or'''' used therein would mean that the exclusion clause is in continuity and not in two independent parts, otherwise the word ''and'' would have been used in between. In support of the plea that the goods being transported by railway can be detained under Section 51 of the Act, reliance was placed upon a Division Bench judgment of this Court in CWP No. 16043 of 2005 Senior Divisional Commercial Manager and others v. State of Punjab and others, decided on 16.5.2008. He further submitted that if this issue goes against the State, then no further issue arises in the present appeal.

6. On the other hand, learned counsel for respondent No.1 submitted that as per

provisions of Section 51 of the Act, goods could be detained in transit in case transported in a goods vehicle. The goods vehicle has been defined under Section 2 (l) of the Act. The vehicle running upon fixed rails is specifically excluded therefrom. In the case in hand, the goods when checked by the ETO (MW) were in a goods train rake and were checked at the Railway Station. The Officer concerned could not invoke jurisdiction under Section 51 of the Act. Hence, the order of penalty has rightly been set aside by the Tribunal. He further submitted that the judgment of this Court in Senior Divisional Commercial Manager''s case (supra) as referred to by learned counsel for the State is distinguishable on facts as in that case the goods were being transported in a Tempo from the place of booking by an agent to the Railway Station. Those were not intercepted during transit in a wagon on fix rail as was in the case in hand. He further referred to a Division Bench judgment of this Court in 1998 (109) Sales Tax Cases 75, International Switch-Gears v. Union Territory of Chandigarh and another, wherein detention of goods being carried on a handcart was held to be bad and consequently the penalty notice was set aside. At that time the goods vehicle did not include handcart.

7. Heard learned counsel for the parties and perused the paper book.

8. The substantial question of law which arises in the present appeal is as under:

''''Whether the goods being transported in a vehicle running upon fixed rails can be detained under section 51 of the VAT Act.''''

9. To appreciate the contentions being raised by learned counsel for the parties it would be appropriate to refer to the relevant provision of the VAT Act.

SECTION 51. ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POSTS AND INSPECTION OF GOODS IN TRANSIT:

(1) If, with a view to prevent or check avoidance or evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification, direct for the establishment of a check post or, information collection centre or both at such place or places, as may be specified in the notification.

(2) The owner or person Incharge of a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle and produce a copy each of the aforesaid documents to an officer Incharge of a check post or information collection centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place:

Provided that a person selling goods from within or outside the State in the course of inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:

Provided Further that a taxable person, who sells or dispatches any goods from within the State to a place outside the State or imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly filled in and signed.

Section 2. (l) ''''goods vehicle'''' includes-

(i) any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer constructed or adapted for use for the carriage of goods and any vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises; and

(ii) any animal-driven or man-driven vehicle used for the carriage of goods solely or with passengers;

(emphasis supplied).

10. A perusal of Section 51 of the Act shows that the owner or person incharge of goods vehicle shall carry with him specified documents with respect to the goods being carried in the goods vehicle which are meant for the purpose of business. Copies of the documents as enumerated in Section 51 (2) of the Act are to be produced at the Information Collection Center or before any Officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.

11. The term ''''goods vehicle'''' has been defined in Section 2 (l) of the Act to mean any mechanically propelled vehicle adapted for use upon roads but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises.

12. It is not disputed in the present appeal that the goods were checked when these were in wagons on fixed rails. In terms of the provision of Section 51 of the Act, the authority was not competent to check such goods in transit.

13. A Division Bench judgment of this Court in International Switch Gears''s case (supra), set aside the notice and initiation of proceedings under Section 14-B of the Punjab General Sales Tax Act (46 of 1948), where the goods were being transported in animal driven cart. The same being not covered in the definition of motor vehicle at the relevant time. This Court opined that the action of the authorities was without jurisdiction. The relevant para thereof is extracted below:

''''..........It cannot, therefore, be accepted, as argued by Shri Sawhney, that sub-section (6) of section 14-B would be attracted even in the case of an animal-driven cart carrying the goods. In sub-section (7) again, the officer detaining the goods has been empowered to record the statement of the owner of the goods or his representative or the driver or other person in-charge of the goods vehicle or vessel. In these circumstances, the plea put forward by Shri Sawhney that vehicles other than goods vehicles are also covered under Section 14-B of the Act cannot be accepted. Since ''''goods vehicle'''' has been defined as a ''''motor vehicle'''', there is no room for any doubt that section 14-B is applicable to a situation where certain goods are being carried in a motor vehicle or a vessel. As the primary condition in the case of the present petitioner is found to have not been fulfilled, the initiation of proceedings and issuance of notice under Section 14-B of the Act are held to be without jurisdiction and bad in law...........''''

14. The contention raised by learned counsel for the appellant that the exception as carved out in the definition of ''goods vehicle'' is to be read in one part namely that the vehicle running upon fixed rails has to have a relation with a vehicle of special type adapted for use only in a factory or any other enclosed premises, is merely to be noticed and rejected. A plain reading of the exception clause shows that it is in two parts having no relation with each other. These being:-

(i) the vehicle running upon fixed rail;

(ii) the vehicle of a special type adapted for use only in a factory or any other enclosed premises.

15. The language of Section is clear to the effect that these are types of vehicles, which are excluded from the definition of ''goods vehicle.''

16. The earlier judgment of this Court in Senior Divisional Commercial Manager''s case (supra), as referred to by learned counsel for the State, is distinguishable on facts as the detention of goods therein was while those were being transported in three tempos on road. The facts were that the goods were booked at the northern railway city booking agency located in the city and were being carried therefrom to the railway station in tempos. The plea sought to be raised by the petitioner therein was that the goods belonged to railways, hence, could not be detained. The argument was rejected.

17. For the reasons mentioned above, the present appeal is dismissed. The question as framed in Para No. 1 is answered in negative opining that the goods being transported in a vehicle running upon fixed rails could not be detained under Section 51 of the Act, at the relevant time.

