(2014) 08 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 18 of 2009

State of Punjab — APPELLANT

Vs

Shreyans Industries Ltd — RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 14B, 14B(6)(i), 14B(7), 14B(7)(ii)

Citation : (2014) 176 PLR 695 : (2015) 78 VST 264

Hon'ble Judges : Bharat Bhushan Parsoon, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Piyush Kant Jain, Additional Advocate General, Advocate for the Appellant; K.L. Goyal, Senior Advocate and Rohit Gupta, Advocate for the Respondent

Judgement

Bharat Bhushan Parsoon, J.—This appeal by the Department is directed against order dated 6.11.2008 passed by the Punjab Value Added Tax Tribunal (in short "the Tribunal") whereby appeal of the respondent-company had been accepted and orders of the Assistant Excise & Taxation Commissioner (AETC), Information Collection Centre (ICC) Export, Shambhu, Patiala as also of the Appellate Authority, viz, Deputy Excise & Taxation Commissioner (Appeal)-cum-Joint Director (Enforcement), Patiala Division, Patiala (DETC) of 31.12.2003 and 26.10.2004 respectively, were reversed. On 20.12.2003, three vehicles loaded with paper showing stock transfer by respondent-company to its branch office at Delhi arrived at ICC Shambhu with relevant documents for the generation of form ST-XXIV as required under Clause (4) of Section 14-B of the Punjab General Sales Tax Act, 1948 (in short "the Act"). After getting the form ST-XXIV generated at the ICC centre, drivers of the said vehicles produced the stock invoices, ground receipts (GR) and forms ST-XXIV before the Excise & Taxation Officer on checking duty.

2. During the process of inspection, having found three loading slips issued by the respondent-company, with the drivers showing that the loaded goods were to

be delivered to M/s. CWC Stores, GT Road, Shahdara, New Delhi, the checking officer thus concluded that the goods were not to be delivered to the branch office of the respondent-company but were to be delivered elsewhere. Having raised the doubt, in order to verify the correctness and validity of the documents, i.e., the stock transfer invoices, GRs, etc., the checking officer ordered for detention of the goods alongwith documents under Section 14-B(6)(i) of the Act. On 23.12.2003, the respondent-company got the goods released against surety bond in terms of provisions of Section 14-B(6)(i) of the Act,

3. The checking officer issued notice under Section 14-B(7)(ii) of the Act in order to afford an opportunity of being heard and for proving genuineness of the documents to the respondent-company. The record was produced by the respondent-company. After considering the record, penalty of Rs. 4,49,000/- was imposed under Section 14-B(7)(ii) of the Act. The respondent-company unsuccessfully challenged this order in appeal before the first Appellate Authority (Annexure A-3). Second appeal before the Tribunal (Annexure A-4), however, resulted in reversal of findings of the checking officer as also of first Appellate Authority. Now the Department is in appeal against the adjudication made by the Tribunal.

4. Though number of questions of law were proposed in the grounds of appeal by the appellant-Department but the only question of law, which emerges to be answered, is as under:--

"Whether order dated 31.12.2003 (Annexure A-1) of the checking officer, affirmed by the Appellate Authority vide order dated 26.10.2004 (Annexure A-2) was within the jurisdiction of the said authority?"

5. The impugned order of penalty has been passed under Section 14-B(7)(ii) of the Act. This provision could be invoked only when there was violation of sub-section (2) or of sub-section (4) of Section 14-B of the Act. Concedingly, Section 14-B of the Act deals with the establishment of check posts or of information collection centres including for export of goods in transit. Merely because drivers of the vehicles of the respondent-company were carrying with them some more documents other than the relevant ones for despatch and transfer of the goods, tenor and temperament of the transaction forming propelling force for movement of the goods would not change.

6. Proceedings under Section 14-B of the Act are of summary nature. The Officer Incharge of the check post or Information Collection Centre or any officer referred to in sub-section (2) suspects that the goods under transport which are meant for trade are not supported by proper and genuine document, may seek detention of the goods along with the vehicle. Further, where the consignor or the consignee fails to satisfy the aforesaid officer about the genuineness of the transaction, the officer is empowered to impose, between twenty to thirty percent of the value of the goods as penalty. Author of the penalty order at the ICC, Shambhu could not go into the question of nature of the transaction. He

could not have assumed jurisdiction of an assessing officer arrogating to himself the powers to determine the nature of the transaction that is as to whether it was a branch transfer or inter-State sale.

7. Reading of the impugned order and provisions of sub-sections (2) and (4) of Section 14-B as also of Section 14-B(7)(ii) of the Act clearly reveal that the impugned penalty order affirmed by the first Appellate Authority goes far and beyond the powers assigned to such officers under the Act.

8. At this stage, it would be relevant to reproduce the aforesaid provisions, which read as under:--

"14-B - Establishment of check posts or information collection centres and inspection of goods in transit:

(1) xx xxx xxx xxx

(2) The owner or person incharge of a goods vehicle shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a goods receipt and a sale bill or cash memo, or delivery note containing such particulars, as may be prescribed. In respect of such goods meant for the purpose of trade as are being carried in the goods vehicle and produce a copy of 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 vehicles at any place.

Provided that a dealer selling the goods from within the State or outside the State in the course of inter state trade or commerce, shall also furnish a declaration with such particulars, as may be prescribed.

Provided further that a registered dealer, who sells or dispatches goods from within the State of Punjab to a place outside the State of Punjab or imports or brings any goods or otherwise receives goods from outside the State of Punjab, shall furnish particulars of the goods in a specified form to be obtained from the appropriate assessing authority in respect of the amount of transaction as may be prescribed.

(3) xxx xxx xxx xxx

(4) The owner or person incharge of a goods vehicle entering the limits or leaving the limits or the State of Punjab shall stop at the nearest check post or information collection centre, as the case may be, and shall furnish in triplicate a declaration mentioned in sub-section (2) along with the documents in respect of the goods carried in such vehicle before the officer incharge of the check post or information collection centre. The officer incharge of the goods vehicle to enable him to produce the same at the time of subsequent checking, if any.

Provided that where a goods vehicle bound for any place outside the State of Punjab passes through the State, the owner or person incharge of such vehicle shall furnish, in duplicate, to the officer incharge of the check post or information collection centre, a declaration of his entry into the State of Punjab in the prescribed form and obtain from him a copy thereof duly verified. The owner or person incharge of the goods vehicle, shall deliver within forty eight hours the aforesaid copy to the officer incharge of the check post or information collection centre at the point of its exist from the State, failing which, he shall be liable to pay a penalty to be imposed by the officer incharge of the check post or information collection centre equal to fifty percent of the value of the goods involved.

Provided further that where the goods carried by such vehicle are, after their entry into the State of Punjab, transported outside the State of Punjab by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State of Punjab, shall be on the owner or person-in-charge of the vehicle.

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard.

(5) & (6) xxx xxx xxx xxx

(7)(i) xxx xxx xxx xxx (7)(ii) The officer authorized by the State Government shall, before conducting the enquiry, serve a notice on the consignor or the consignee of the goods detained under clause (i) of subsection (6), and given him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall by order impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent and not more than thirty percent of the value of the goods and in case he finds otherwise, he shall order the release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings."

9. In similar circumstances, a Division bench of this Court in GSTR No. 10 of 1998 (M/s. Devi Dass Gopal Krishan Ltd., Moga v. State of Punjab,) decided on 16.2.2009, had held that:--

"10. A perusal of the aforesaid provisions makes it evident that a person incharge of a goods vehicle is under obligation to carry with him (a) goods vehicle record or in other words a trip sheet or a log book; (b) a goods receipt; (c) a challan or delivery note containing prescribed particulars; Form No. XIV-A as per proforma of the Act, and an intimation of the consignment to the Assessing Officer as per the requirement of Rule 3-A of the Rules showing that the dealer is selling the goods outside the State or within the State. If the aforesaid documents are shown and found authentic then no further steps are required to be taken by the officer incharge of a check post. However, as per provisions of sub-section 6, if the officer incharge of the check post or Information Collection Centre has reason to suspect that the goods under transport are meant for trade and not covered by proper and genuine documents or for other reasons find that the person transporting the goods is attempting to evade payment of tax then for reasons to be recorded in writing, a detention order of goods alongwith vehicle could be passed and the goods have to be released on executing a bond with sureties in the prescribed form or furnishing a security or even bank guarantee etc. The expression ''reason to believe'' used in sub-section (6) of Section 14-B of the Act imposes an obligation on the officer incharge of the check post to act objectively and not merely on the basis of his arbitrary opinion formed. The example could be if the details given in all the documents do not tally with the goods in the vehicle then there may be justification for detention of the goods. However, the provisions do not permit the officer to go to the extent of determining the nature of the transaction, which, in fact, lies within the jurisdiction of the regular assessing authority. Therefore, the natural corollary is that the answer to the question is liable to be given in favour of the dealer and against the revenue.

(emphasis by underlining added)

10. In this authority, facts were almost similar to the facts of the case in hand. On 9.7.1991, the check barrier officer had intercepted one consignment of mustard oil packed in several tins. After scrutinizing the documents accompanying the consignment, interception note was issued. The petitioner appeared before the officer and apprised the detaining officer of the entire situation and circumstances. Despite explanation furnished by the trader, penalty under Section 14-B(7) was imposed and then was recovered in cash. The basis for imposing penalty was that the goods were sold in the course of inter State sales and there was an attempt to evade tax.

11. Even in the present case, allegations are that the goods were being transferred as branch transfer but were actually moving in the course of inter State sale and thus there was evasion of tax.

12. In Automobile Products of India Limited v. State of Karnataka, [1991] 081 S.T.C. 414, it was held that check post officer could only see whether prescribed documents were being carried with the vehicles were proper and genuine or not. It was held as under:--

"......We find from the order of the Appellate Tribunal that it totally misdirected itself in treating the penalty order as if it was an assessment order passed by a competent assessing authority and looked into the question whether the sale was intra-State sale or inter-State sale. That perhaps was due to the mistake originally committed by the Check-post Officer and perpetuated by the other appellate authorities.

Assuming for a moment that indeed the documents carried by the vehicle in question did disclose a sale between the seller in Bombay, manufacturer of the vehicles, and M/s. South India Automotive Limited at Bangalore who had to take delivery of those scooters, then the information so gathered by the Check-post Officer could at best be utilized to bring to tax by the concerned authority at

Bangalore where M/s. South India Automotive Corporation Limited would be a registered dealer. Any mistake made as claimed, as we have already expressed, cannot clothe the Check-post Officer with jurisdiction to do something which he was not expected to do under the provisions of section 28-A of the Act. His job was to ascertain whether the prescribed documents accompanied the vehicle and the goods which in turn were liable to tax under the Act. Anything else he did would be without jurisdiction and we have no hesitation to state, that on account of his total misdirection, there was improper exercise of jurisdiction and the order of the Appellate Tribunal, the first appellate authority as well as Check-post Officer are, therefore, liable to be quashed and they are accordingly quashed."

13. In Parry and Company Ltd. v. Commissioner of Sales Tax, U.P., Lucknow, [2004] 138 S.T.C. 437, it was held that check post officer was not competent to go into the nature of transaction which could only be decided in regular assessment proceedings. It was held that he over-stepped his jurisdiction to impose penalty by holding that it was evasion of payment of tax. Counsel for the respondent-company has further sought support from Utakal Galvanisers Limited v. Commissioner of Commercial Taxes, Orissa and others, [1997] 104 S.T.C. 222 (Orissa) and Xcell Automation Vs. Government of Punjab and Another, .

14. In Kelvinator of India Ltd. Vs. The State of Haryana, , Supreme Court has held that there is nothing illegal or impermissible for a party in so arranging its affairs that the liability to pay tax would not be attracted or that the brunt of taxation would be reduced to the minimum. In the cited authority, version of the appellant was accepted and transfers made by the company were taken to be genuine by the Sales Tax authorities.

15. The Tribunal, while adjudicating the issue in favour of the dealer had recorded as under:--

"Section 14-B of PGST Act deals with establishment of check post or Information Collection Centres and inspection of goods in transit. Vehicles had voluntarily reported at ICC. Action under Section 14-B(7)(ii) of the Act could be taken when where there was violation of Sub-section (2) or (4) of Section 14-B of the Act. The drivers of the vehicles had the invoices in the form of stock transfer and GRs with them. Even if the drivers had some document showing that the goods were to be unloaded at the address of CWC stores, GT Road, Shahdhra, Delhi, still the documents which the drivers were carrying could not be said to be in genuine or transaction doubtful. If there was any doubt then the matter should have been reported to the Assessing Authority rather than conducting proceedings under Section 14-B of the Act. Proceedings under Section 14-B of the Act are summary proceedings and the authorities at the ICC could not possibly go into intricate questions as to whether it was branch or inter-state sale...."

16. Learned State Counsel has not been able to demonstrate any flaw in the approach of the Tribunal which may warrant interference. In the given set of circumstances, the answer to the question is determined in the negative. Finding

no factual or legal infirmity in the impugned order of the Tribunal, the same is upheld. Consequently, the appeal is dismissed.