
(2010) 04 P&H CK 0100
In the Punjab And Haryana At Chandigarh

Swaraj Mazda Limited

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 22, 68

Citation : (2010) 31 VST 487

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—Invoking the provisions of Section 68(1) of the Punjab Value Added Tax Act, 2005 (for brevity "the Act"), the appellant-assessee Swaraj Mazda Limited (for short "the assessee") has filed the present appeal against the impugned order dated 17.3.2006 (Annexure A12), vide which, the Sales Tax Tribunal, Punjab dismissed its appeal.

2. The compendium of the facts, culminating in the commencement of, relevant for disposal of present appeal and emanating from the record, is that the assessee was manufacturing light commercial vehicles, having its branches all over the country. One of its branches (Sale Office) was stated to be located and independently functioning as "Swaraj Mazda Limited, Lotus Building, Stilt Floor, NECO Gardens, Viman Nagar, Nagar Road, Pune, Maharashtra. The main job of its Pune Branch is simply to procure orders from various customers of Maharashtra State and supplied the vehicles after receiving the same from its head office and factory in Punjab.

3. The assessee claimed that its Pune branch office receives the vehicles sent by the factory from Punjab and enters the same in its stock. Its sale is, thereafter, made by raising the invoice at its branches and vehicles are sold at "all inclusive price". The buyer does not pay any extra transportation charges or other related expenses. It was alleged that the Pune Branch of the assessee received a

contract of supplying of seven vehicles with different specifications and for supply of 15 nos. of prison vans with certain specifications to Maharashtra Police. Consequently, the assessee manufactured the vehicles, as per requirement, in its factory in Punjab and was in process of sending the same to Maharashtra State. On 7.5.2001, these new vehicles were stopped and checked at ICC, Jharmari (Lalru) by the Taxation Officer. The drivers of the vehicles produced all the relevant documents relating to the goods.

4. According to the State authorities, as the documents covering the goods were not proper and genuine, therefore, a detention notice dated 7.5.2001 (Annexure A5) was issued to the assessee. Its representative appeared before the detaining officer and explained that the assessee has not committed the violation of any rules, but the detaining officer did not agree with the plea of the assessee. Another notice dated 14.5.2001 (Annexure A6) was issued. In pursuance of the said notice, the assessee filed the reply (Annexure A7). The explanation put forth by the assessee did not find favour and the authority under the Act imposed a penalty of Rs. 9,65,000/-, vide order dated 30.6.2001 (Annexure A8).

5. Aggrieved by the order (Annexure A8), the assessee filed the appeal before the Deputy Excise & Taxation Commissioner (Appeals), which was also dismissed, vide order dated 21.2.2005 (Annexure A10).

6. Still aggrieved by the order (Annexure A10), the assessee filed the appeal before the Sales Tax Tribunal, Punjab, which was dismissed as well, vide order dated 17.3.2006 (Annexure A12).

7. Thereafter, the assessee filed CWP No. 10339 of 2006 challenging the order (Annexure A12) and this Court relegated it to avail alternative remedy of filing reference application u/s 22(1) of the Act. Consequently, the assessee filed the reference application (Annexure A13), which was dismissed by the Tribunal, vide order dated 20.7.2007 (Annexure A14).

8. In the wake of reference application u/s 22(2) of the Act and in view of the judgment in case M/s MUS Marketing v. State of Punjab reported in 12 VST 123, the Division Bench of this Court allowed the assessee to withdraw the petition with liberty to file the appeal.

9. Therefore, under these circumstances, the assessee filed the present appeal against the impugned order (Annexure A12), which was admitted to consider the following substantial questions of law:

(i) Whether the check-post authorities are empowered to go into the nature of transaction and impose the penalty u/s 14-B of the Punjab General Sales Tax Act, 1948, though the assessing officer has not disputed the transaction of branch transfer?

(ii) Whether on the facts and circumstances of the case, the Tribunal was justified in upholding the penalty u/s 14-B of the Act?

10. Impugning the order, the learned Counsel for the assessee has contended with some amount of vehemence that the drivers of the vehicles had voluntarily approached the ICC, Jharmari and produced/submitted all the relevant documents, depicting the quantity and value of the goods at ICC, which were duly recorded in computer record of the department, so, the question of any evade/avoid the tax, did not arise at all. The argument further proceeds that the appropriate authority had no jurisdiction to impose penalty, during the course of summary proceedings u/s 14-B of the Act, which only required the proper accounting of transaction in the books of consignor or consignee. Once the drivers of the vehicles have reported and submitted the relevant documents at the ICC, then the detaining officer is not entitled to take cognizance of the fact that the transaction is inter State sale or otherwise. According to the learned Counsel for the assessee, the proceedings u/s 14-B are summary in nature and can only be invoked, if there is cogent material on record and a specific finding, that there has been an attempt to avoid and evade tax, before invoking the penalty clause and such intricate question cannot be decided in the summary proceeding under this section.

11. Raising a variety of arguments, in all, according to the learned Counsel for the assessee that since the transaction in question was only stock transfer, so, the imposition of penalty etc. is illegal, non-est and without jurisdiction and prayed for acceptance of the instant appeal. In this regard, he has placed reliance on the judgment of Hon''ble Apex Court in case Kelvinator of India Ltd. Vs. The State of Haryana, ; judgments of this Court in cases Mool Chand Chuni Lal Vs. Manmohan Singh and Another, , GSTR No. 17 of 2006 titled as "Anand Refrigeration Co.(P) Limited, Jalandhar City v. The State of Punjab" decided on 18.1.2010 and judgment of Allahabad High Court in case Parry and Company Ltd. Vs. Commissioner of Sales Tax, .

12. Hailing the impugned order, on the contrary, the learned State counsel has urged that the present transaction was an inter State sale and since the assessee did not pay the requisite rate of tax on such transactions, therefore, it was an attempt on the part of the assessee to avoid/evade the tax and the penalty clause was rightly invoked by the authority, in view of the judgment of Hon''ble Supreme Court in case IDL Chemicals Limited v. State of Orissa (2007) 14 SCC 386.

13. We have heard the learned Counsel for the parties and have gone through the record with their valuable help.

14. Above being the position on record, now the sole question, that arises for consideration in this case, is whether the penalty u/s 14-B (7) of the Act was exigible or not? Section 14-B(1) deals with the establishment of a check post or Information Collection Centre and inspection of goods in transit, while Sub-section (6) authorizes the Officer Incharge to check the documents and detain the goods.

15. Section 14-B (7) (i) of the Act postulates that "the officer detaining the goods under Sub-section 6, shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person Incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within a period of seventy two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alongwith the concerned records to such officer, as may be authorized in that behalf by the State Government for conducting necessary enquiry in the matter.

16. Sub clause (ii) of Sub-section (7) further posits that "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 Sub-section (6), and give 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, 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 per cent 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".

17. According to sub clause (iii), the officer referred to in clause (ii), before conducting the enquiry, shall serve a notice on the consignee of the goods, detained under clause (ii) of Sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer is satisfied that the documents as required under Sub-section (2) and Sub-section (4), were not furnished at the information collection centre or the check post, as the case may be, with a view to attempt to avoid or evade the tax due or likely to be due under the Act, he shall by order for reasons to be recorded in writing, impose on the consignor or the consignee of the goods, penalty equal to fifty per cent of the value of the goods involved. In case, he finds otherwise, he shall order release of the goods for sufficient reasons to be recorded in writing. He may, however, notwithstanding anything contained in clause (ii) of Sub-section (6), order release of the goods and vehicle on furnishing a security by the consignor or the consignee in the form of cash or bank guarantee or crossed bank draft for an amount equal to the amount of penalty imposeable and shall decide the matter within a period of fourteen days from the commencement of the enquiry proceedings.

18. Therefore, a co-joint reading of these provisions would reveal that if the officer detaining the goods has reason to suspect that the goods are not covered by proper and genuine documents, he can ask the consignor or consignee or his representative, as the case may be, to prove the genuineness of the documents/ transaction within a period of seventy two hours of the detention and the said officer shall, immediately thereafter, submit the proceedings alongwith the

concerned records to such officer, as may be authorized in that behalf by the State Government for conducting necessary enquiry in the matter.

19. In other words, such authorized officer is under legal obligation to conduct enquiry after serving a notice to the effected party and give 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, only then the authorized officer can impose the penalty and not otherwise. Meaning thereby, the penalty can only be imposed if the documents produced by the owner or the person incharge of the goods, were fake and not genuine and if there is sufficient material and specific finding that an attempt to avoid/evade the tax due or likely to be due has been made by the assessee and not otherwise, which is condition precedent. Hence, the production and genuineness of the documents or otherwise is co-related and condition precedent for invoking the penal provision under this section.

20. An identical question arose before a Full Bench of this Court in Mool Chand Chuni Lal's case (supra), Having interpreted the relevant provisions and relying upon the judgment of this Court in case Dunlop India Limited v. State of Punjab [1972] 30 S.T.C. 597, it was held that the amended Section 14-B (7) of the Act for levy of penalty is not based on any assumption that the goods were transported after sale within the State. Its basis is the attempt to evade tax and it prescribes a condition precedent for the levy of penalty. The condition precedent is that the authorized officer should record a finding that there has been an attempt to evade the tax due under the Act. The goods which are to be detained are also specified in Section 14-B (6) as goods meant for trade and not covered by proper and genuine documents. Sequelly, in Prakash Roadlines (P) Ltd's case (supra), it was observed that "mere failure to produce documents on demand by the assessee not by itself sufficient to sustain levy of penalty."

21. Likewise, the Allahabad High Court in Parry and Company Ltd.'s case (supra), has held that if the assessee had made declaration of goods voluntary at the check-post and produced other documents, therefore, there was no scope not to disclose such transaction in the books of account, left no room for any attempt to evade tax and penalty cannot be imposed in this respect.

22. As is evident from the record, the drivers of the indicated vehicles produced all the genuine documents, depicting the description and value of the goods. It is not the case of the department that the documents submitted on behalf of the assessee were forged or not genuine. The penalty has been imposed on it (assessee) only on the ground that it was an inter State sale, but the same has been shown as the stock transfer.

23. Possibly, no one can dispute about the law laid down in IDL Chemicals Limited's case (supra), relied on behalf of the State that the goods sold through agents in various States would amount to inter State sales and tax was leviable accordingly, but the same would not come to the rescue of the State at this stage. In the instant case, whether it was inter State sales or stock transfer and

whether the tax at the rate of 4%, 5.4%, or 8%, as the case may be, is leviable, are entirely a different matter to be determined by the competent authority at the appropriate time of finalization of the return of relevant assessment years. Be that as it may, the assessee has a plausible explanation to offer as to whether the tax is to be paid on the transaction in question as inter State sale or stock transfer. Such intricate question cannot be adjudicated upon in summary proceedings and penalty cannot be imposed without any cogent material to record the finding that there has been an attempt to avoid or evade the tax under the garb of Section 14-B(7) of the Act in this relevant connection, particularly when it is not the case of the State that the documents produced at ICC, depicting complete description and value of the goods, were fake or ingenuine. Hence, in our considered opinion, the authorities below proceeded on wrong premises and imposed the penalty without any material to avoid/evade the tax liability by the assessee. Reliance can also be placed upon the judgment of this Court in M/s Anand Refrigeration Co.(P) Limited's case (supra) in this regard.

24. There is another aspect of the matter, which can be viewed from a different angle. As indicated above, Section 14-B (7) of the Act envisaged different situations for levying penalty. That means, there is a provision for levying a penalty in this respect, but penalty should not ordinarily be imposed only on the ground that such provision exists in statue. It should only be imposed if the party either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation, (which are totally lacking in the case in hand). Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances. Hon'ble Apex Court in Hindustan Steel Ltd. v. The State of Orissa [1970] 25 S.T.C.211 has ruled that "even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

25. Thus, seen from any angle, we are of the considered opinion that in the absence of any cogent material and specific finding that the documents produced at ICC were fake and were not genuine and that there has been an attempt to avoid or evade the tax, no penalty can legally be imposed on the assessee as contemplated u/s 14-B (7) of the Act. The contrary argument on behalf of the State "stricto-sensu" deserves to be and are hereby repelled as the aforesaid judgments are the complete answer to the problem in hand.

26. In the light of the aforesaid reasons, it is held that on the facts and circumstances of the case, penalty u/s 14-B (7) of the Act cannot be imposed and the Tribunal was not justified in upholding the same. Hence, the substantial

questions of law are decided in favour of the assessee, in the obtaining circumstances of the case. However, it made abundantly clear that the department would be at liberty to decide the nature of indicated transaction (inter State or stock transfer or otherwise) and levy tax etc. accordingly, as per law at the time of finalization of return of the relevant assessment year.

27. For the reasons recorded above, the instant appeal is hereby accepted with no order as to costs and the impugned orders are accordingly set aside.