(2010) 09 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal No. 12 of 2010

Transway Freight Carrier (P) Ltd. — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 3, 51, 51(7), 68, 94
Punjab Value Added Tax Ordinances — Section 3(1), 3(2)

Citation : (2010) 09 P&H CK 0069

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred u/s 68 of Punjab Value Added Tax Act, 2005 (in short "the Act") proposing following substantial questions of law:

I) Whether Joint Director (Investigation)-cum-DETC has jurisdiction to hear the appeals against orders passed u/s 51(7) of the VAT Act in the absence of notification issued by the State Government.

II) Whether the order passed by the Ld. Tribunal with regard to the jurisdiction of the Joint Director (Investigation)-cum-DETC is sustainable in law?

III) Whether penalty u/s 51(7)(c) of the VAT Act could be imposed when the driver has voluntarily stopped the vehicle at the ICC and produced documents pertaining to the goods loaded in the vehicle?

IV) Whether it was obligatory upon the respondent No. 3 to have issued notice to the consignor or consignee of the goods before passing order u/s 51(7)(c) of the Act when their particulars were available during the course of proceedings pertaining to remand case decided on 31.10.2007?

V) Whether penalty imposed without issuing notice to the consignor or consignee is sustainable in law?

VI) Whether penalty has illegally been imposed by the ETO upon the appellant Transport Company?

VII) Whether notification dated 31.03.2005 issued in exercise of powers conferred by Sub-section (1) & (2) of Section 3 of the Punjab VAT (Ordinance) stands repealed in view of Section 94 of the VAT Act, 2005 and another notification was required to be issued u/s 3 of the VAT Act, 2005?

2. The appellant was transporting the goods without documents statutorily required under the Act. After necessary checking and following the statutory procedure, penalty was imposed which was upheld by the Tribunal. The Tribunal recorded the following finding:

From the perusal of the department file, it would come out that the appellant which was a transport company had issued two challans for miscellaneous Parchoon goods and then the driver in charge of the vehicle had generated declaration at the ICC in respect of goods mentioned in those challans. When physical verification was done then 47 nags of yarns weighing three tons were found excess. The value was assessed at Rs. 2,85,000/-. It was only after the matter was remanded that third challan was shown and copy of bill issued by M/s Vishal Trading Corporation of Amritsar in favour of M/s Sai Textile, Bhilwara in Rajasthan was produced with a copy of GR. When notice after detention of the goods was issued through the driver of Transport Company got the goods released on filing security etc. then the appellant transporter could easily produced these documents and thereafter, only notice to the consignor or the consignee could be issued. The fact remain that ICC declaration in respect of this yarn was not generated nor the driver in charge had shown any bill or GR or challan in respect of yarn found excess. Production of the documents later when the matter was remanded by the DETC would not be of much avail as the proceedings u/s 51 of the Punjab VAT Act are to be completed by the Designated Officer within the fixed time frame i.e. 14 days from the commencement of inquiry proceedings.

3. We have heard learned Counsel for the parties.

4. Questions I, II and VII proposed on behalf of the appellant are covered by order passed today in CWP No. 9580 of 2009 (Horizon Building Solution Pvt. Ltd. v. State of Punjab and Ors.). Accordingly, the said questions cannot be held to be substantial questions of law.

5. As regards, questions III and V, facts presumed therein are contrary to the finding recorded by the Tribunal reproduced above which is not shown to be perverse. In such a situation, the questions proposed cannot be held to be substantial questions of law. Similarly, questions IV and VI cannot be held to be substantial questions as the driver of the vehicle got the goods released on behalf of the owner in which case there was no question of notice to the

consignor/consignee. The penalty has been imposed on the appellant/transporter who got goods released. It cannot, thus, be argued that the penalty should have been imposed on the someone else as owner. Accordingly, the questions proposed cannot be held to be substantial questions of law.

6. The appeal is dismissed.

