(2004) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6884 of 2004

United Polymer Industries APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 14B

Citation : (2006) 146 STC 571

Hon'ble Judges : N.K. Sud, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : K.L. Goyal and Sandeep Goyal, for the Appellant; Shalil Sagar, Additional Advocate-General Respondent No.1 and 2 and Kishan Singh, Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This petition, inter alia, challenges notice dated March 21, 2004 (annexure P.4) of detention of goods at the check-post of Information Collection Centre (for short, "ICC") and notice dated March 23, 2004 (annexure P.6), for imposing penalty in respect of the said goods.

2. Case of the petitioner is that it is registered as a dealer under the provisions of the Punjab General Sales Tax Act, 1948 (for short, "the Act"). It is a consignment stockist of GAIL (India) Ltd., a Government of India undertaking. GAIL sends goods to the peti- tioner as consignment agent and tax for sale of the said goods is paid at the time of last sale in Punjab. In the past, when such goods passed through the ICC, no objection was ever raised and there was no question of making any attempt to evade tax. On March 18, 2004, goods were sent by GAIL. On March 21, 2004, when the goods reached the ICC, Ram Nagar (at the border of Punjab State), the driver of the vehicle produced challan-cum-stock transfer invoice duly issued by the GAIL and the goods receipt, wherein details of the goods were clearly mentioned. In spite of this, the detaining officer gave notice, annexure P.4, wherein it was mentioned that goods carried in the vehicle were

covered by the vehicle receipt and the bill (challan-cum-stock transfer invoice). Reasons for suspicion mentioned are that the goods are being sent from GAIL India to United Polymer, whereas one firm cannot transfer the goods to other firm by way of stock transfer. On March 22, 2004, representative of the petitioner appeared before the detaining officer and in the written explanation submitted on March 26, 2004, agreement dated November 5, 2003 between GAIL India and the petitioner was also produced and it was submitted that there was no attempt to evade tax in any manner. It was also stated that the stock register, etc., were also being produced to verify transactions. Vide order dated April 9, 2004, penalty was imposed and bank guarantee which had been furnished by the petitioner for release of goods was sought to be encashed. It is stated that before encashing the bank guarantee, copy of the order of penalty was not supplied to the petitioner nor any demand notice was served.

3. In reply, it is stated that pro forma of bill/stock transfer invoice created suspicion in the mind of the detaining officer as names of the consignor and consignee were different. It is further stated that supply of copy of order imposing penalty was not required before encashing the bank guarantee. It is further stated that since appeal was provided against order of penalty, matter could not be gone into in the writ petition. Basis of order imposing penalty is that the petitioner was not registered as a branch of GAIL India and, therefore, there could be no stock transfer.

4. Learned Counsel for the petitioner submitted that the detention of goods was mala fide and arbitrary, imposition of penalty was without any basis and an attempt to recover penalty from the bank guarantee was illegal as no order of penalty was supplied to the petitioner nor any demand notice was served. Reliance was placed on the decisions of this Court in Oswal Agro Mills Ltd. v. Excise and Taxation Officer-cum-Assessing Authority, Ludhiana (2002) 20 PHT 569 and Jindal Jewellers, Delhi v. State of Punjab [2004] 138 STC 93 (P7H) : (2003) 21 PHT 487, wherein it was held that copy of the order had to be supplied to the petitioner so that he could take his remedies in accordance with law.

5. On behalf of the respondents, detention of goods and imposition of penalty was sought to be justified only on the ground that in the stock transfer invoice, names of consigner and consignee were different.

6. Main question to be considered is the scope and manner of exercise of powers u/s 14B of the Act at a check-post of ICC. The said provision is as under:

Section 14-B. Establishment of check-posts or information collection centres 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-in-charge 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, ordelivery 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-in-charge of a check-post or information collection centre or any other officer not below the rank of an Excise c and Taxation Officer checking the vehicle 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. (3) At every check-post or information collection centre or at any other place when so required by an officer referred to in Sub-section (2), the driver or any other person-in-charge of the goods vehicle shall stop the vehicle and keep it stationary, as long as may reasonably be necessary, and allow the officer-in-charge of the check-post or the information collection centre or the aforesaid officer to check the contents in the vehicle by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried, which are in the possession of the driver or any other person, as may be required by the aforesaid officer, and if considered necessary, such officer may also search the goods vehicle and the driver or other person-in-charge of the vehicle or of the goods.

(4) The owner or person-in-charge of a goods vehicle entering the limits or leaving the limits of 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-in-charge of the check-post or information collection centre. The officer-in-charge shall return a copy of the declaration duly verified by him to the owner or person- in-charge 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-in-charge of such vehicle shall furnish, in duplicate, to the officer-in-charge of the check-post or information collection centre, a declaration in respect 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-in-charge of the goods vehicle shall deliver within forty-eight hours the aforesaid copy to the officer-in-charge of the check-post or information collection centre at the point of its exit from the State, failing which, he shall be liable to pay a penalty to be imposed by the officer-in-charge of the check-post or information collection centre not exceeding two thousands rupees of twenty per cent of the value of the goods, whichever is greater:

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

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, when so required by the Commissioner or any other person appointed to assist him Under Sub-section (1) of Section 3, the driver or the owner of the goods vehicle or the employee of transport company or goods booking agency, shall produce for examination, transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport, maintained by him in the prescribed manner. The Commissioner or the person so appointed shall, for the purpose of examining that such transport receipts or other documents or account books are in respect of the goods carried transported, loaded, unloaded or consigned or received for transport, have the powers to break open any package, or packages of such goods.

(6)(i) If the officer-in-charge of the check-post or information collection centre or any other officer as mentioned in Sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub-section (2) or Sub-section (4), or the driver has not stopped the vehicle as required Under Sub-section (3) or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be recorded in writing and after hearing the person concerned, order the detention of the goods along with the vehicle for such period, as may reasonably be necessary. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee, if registered under the Act to the satisfaction of the officer detaining the goods and in case the consignor or the consignee is not registered under the Act, then on furnishing a security in the form of cash or bank guarantee or crossed bank draft, which shall be A thirty per cent of the value of the goods, rounded up to the nearest hundred.

(ii) If the owner or the person-in-charge of the goods has not submitted the documents as mentioned in Sub-section (2) and Sub-section (4) at the nearest check-post or information collection centre, in the State of Punjab, as the case may be, on his entry into or exist from the State, such goods shall be detained and shall be released only after the matter is finally decided Under Clause (iii) of Sub-section (7).

(7)(i) The officer detaining the goods shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person-in-charge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office on a specified date on which date, the officer shall submit the proceedings along with the concerned records to such officer, as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter.

(ii) The officer authorised 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 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 per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods.

(iii) The officer referred to in Clause (ii), before conducting the enquiry, shall serve a notice on the consignor or 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 finds that the documents as required Under Sub-sections (2) and (4), were not furnished at the check-post or information collection centre, as the case may be, he shall by order, impose on the consignor or consignee of the goods, a penalty which shall be fifty per cent of the value of the goods.

(iv) The officer-in-charge of a check-post or information collection centre or any other officer referred to in Sub-section (2), may receive the amount of cash security as referred to in Clause (i) of Sub-section (6) and the amount of penalty imposed Under Sub-section (4) and Clauses (ii) and (iii) of Sub-section (7) against a proper receipt in the prescribed manner.

(8) If the consignor or consignee of the goods or his representative does not furnish security or does not execute the bond as required by Sub-section (6), within ten days from the date of detaining the goods vehicle, the officer referred to in that Sub-section, may order further detention of the goods and in the event of the consignor or consignee of the goods not paying the penalty imposed Under Sub-section (7) within twenty days from the date of the order imposing the penalty, the goods detained shall be made liable to be sold by the officer, who imposed the penalty for the realisation of the penalty by public auction in the manner prescribed. If the goods detained are of a perishable nature or subject to speedy or natural decay or when the expenses of keeping them in custody are likely to exceed their value, the officer-in-charge of the check-post or information collection centre or any other officer referred to in Sub-section (2), as the case may be, shall immediately sell such goods or otherwise dispose them of. The sale proceeds shall be deposited in the Government Treasury and the consignor or consignee of the goods shall be entitled to only the balance amount of sale proceeds after deducting the expenses and other incidental charges incurred in detaining and disposing of the goods:

Provided that if the consignor or consignee of the goods does not come forward to claim the goods, then the entire sale proceeds, shall be deposited in the Government Treasury and no claim for balance amount of sale proceeds will be entertained from any other person.

(9) The officer detaining the goods shall issue to the owner of the goods or his representative or the driver or the person-in-charge of the goods vehicle, a receipt specifying the description and quantity of the goods so detained and

obtain an acknowledgement from such person or if such person refuses to give an acknowledgement, then record the fact of refusal in the presence of two witnesses.

(10) If the order of detention of goods Under Sub-section (6) or of imposition of penalty Under Sub-section (4), or Sub-section (7) or order Under Sub-section (8), is in the meantime set aside or modified in appeal or other proceedings, the officer detaining the goods and imposing the penalty, as the case may be, shall also pass consequential orders for giving effect to the orders in such appeal or other proceedings, as the case may be.

(11) No dealer or any person including a carrier of goods or agent of a transport company or booking agency, acting on behalf of a dealer, shall take delivery of, or transport from any station, airport A or any other place, whether of similar nature or otherwise any consignment of goods other than personal luggage or goods for personal consumption, the sale or purchase of which is taxable under the Act, except in accordance with such conditions, as may be prescribed, with a view to ensure that there is no avoidance or evasion of the tax imposed by or under the Act.

Explanation.--For the purposes of Sub-section (7), service of notice on the representative of the owner or the driver or other person-in-charge of the goods vehicle, shall be deemed to be a valid service on the consignor or consignee of the goods.

7. Under the above provision, if there is any reasonable suspicion of evasion of tax, the detaining authority is justified in detaining the goods and holding an enquiry into the matter. Though, this power is necessary to safeguard the interest of Revenue and to check evasion of tax, this provision is not intended to confer any arbitrary power on the detaining officer to detain goods without any rhyme or reason under the colourable exercise of such power. Such abuse of power is required to be checked lest it should become a source of abuse of authority or violation of legitimate rights of citizens.

8. In the present case, relevant documents, viz., goods receipt as well as stock transfer invoice were duly produced. The consignor is a Government of India undertaking. There is no law that consignor and consignee must be the same person. The petitioner produced the agreement showing that it was the agent of the consignor before the detaining authority. The detaining authority did not doubt the genuineness of the consignment agreement nor any finding has been recorded that transfer of goods to the petitioner by the GAIL amounted to sale and not stock transfer under the contract of agency. Distinction between a contract of sale and a contract of stock transfer by the transferor to its agent is well-known. Sale is transfer of title to the goods for price paid or promised. The essence of agency to sell is delivery of goods to a person to sell them not as his own property but as the property of the principal who continues to be the owner of the goods. An agent can well be a different person. There is no requirement

that stock transfer can be only by the transferor to itself and not to the agent. In Tirumala Venkateswara Timber and Bamboo Firm Vs. Commercial Tax Officer, Rajahmundry, , it was held:

As a matter of law there is a distinction between a contract of sale and a contract of agency by which the agent is authorised to sell or buy on behalf of the principal and make over either the sale proceeds or the goods to the principal. The essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. The transferee in such a case is liable to the transferor as a debtor for the price to be paid and not as agent for the proceeds of the sale. The essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds. The true relationship of the parties in each case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the legal relationship.

9. No reasonable person having bare minimum knowledge of law can hold such a view. Detention of goods was, thus, clearly uncalled for. The concerned authority, however, not only detained the goods in spite of this objection but also imposed penalty. They also sought to recover the penalty even without furnishing a copy of the penalty order. No doubt, an appeal is provided against order of penalty but where an order has been passed in colourable exercise of power and is patently illegal, its validity can be examined even in exercise of writ jurisdiction to check abuse of authority. There was also no justification to recover penalty without supplying a copy of order of penalty or without conveying such an order to the affected party. The sales tax is leviable only if there is a sale or purchase and not when transfer of consignment of goods by a principal to the agent. There is no question of levy or evasion of sales tax on admitted facts.

10. For the above reasons, this petition is allowed. The orders regarding detention of goods and penalty are quashed.

11. It appears, prima facie, that the detaining authority and the authority passing the order of penalty did not act fairly and did not have minimum knowledge of law expected from such authorities, to safeguard the interest of the Revenue as well as the rights of citizens. We, therefore, direct the Commissioner, Sales Tax, Punjab, to examine this aspect of the matter after giving due opportunity to the concerned officers and take appropriate action in accordance with law. The State will be liable to pay costs, quantified at Rs. 10,000, which it will recover from the erring officers.

