
(2009) 12 P&H CK 0108
In the Punjab And Haryana At Chandigarh

Vardhman Industries Ltd.

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2010) 30 VST 517

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jaswant Singh, J.—This order shall dispose of seven VAT Appeals bearing Nos. V.A.T.A.P. 12, 13, 14, 15, 16, 17 and 19 of 2009, involving common question of law and similar facts, filed by the appellant-assessee u/s 68(2) of the Punjab Value Added Tax Act, 2005 (for short "the VAT Act") against the common order dated October 3, 2008 (annexure A/8) passed by the Tribunal whereby seven Appeal Nos. (VAT) 186-192 of 2007-08 filed by the appellant-assessee were dismissed. Facts are being noticed from V.A.T.A.P. No. 12 of 2009.

2. The appellant-assessee is engaged in the manufacturing and sale of iron and steel goods with its manufacturing unit at Beopar (Rajpura) District Patiala and its registered office at G.T. Road, Sahnewal, District Ludhiana. The appellant-assessee is registered under the Punjab General Sales Tax Act, 1948 (for short "the PGST Act") and Central Sales Tax Act, 1956 (for short "the CST Act") and subsequently under the VAT Act. It has also been granted exemption from payment of tax for a period of seven years with effect from March 27, 2000 to March 26, 2007 for an amount of Rs. 28,50,58,500 vide its exemption certificate dated July 27, 2001 (annexure A1). Subsequent to the enforcement of VAT Act with effect from April 1, 2004 it was granted an entitlement certificate for tax exemption subject to the un-utilised maximum of Rs. 19,57,82,271 for the remaining period with effect from April 1, 2005 to March 26, 2007 vide entitlement certificate dated June 13, 2005 (annexure A2).

3. It is claimed that the goods were sold by the appellant-assessee (consignor) to consignee - M/s. Misbah Fabrication, Hari Singh Street, Srinagar vide invoice No. 3858 dated March 26, 2007 and earmarked for loading in truck No. JK03A1334 vide GR No. 2075 dated March 26, 2007 in the name of Kaka Transport. The truck bearing No. JK03A1334 reported at information collection centre (ICC) Madhopur on March 30, 2007. It is not disputed that the required documents as envisaged under Sub-section (2) of Section 51 of the VAT Act were presented at the ICC Center, however, the goods were detained by the officer in-charge under Sub-section (6)(a) of Section 51 of the VAT Act by doubting the genuineness of the transaction/documents as the arrival and reporting of the vehicles at the ICC Center had been after four days of the date of invoice. Similarly, in the connected six appeals six other trucks containing goods were also detained since those vehicles had also taken four to ten days from the date of invoice, i.e., March 26, 1997 in covering a distance of about 250 kilometres from Rajpura to Madhopur. It was therefore, found that the invoices were ante dated to evade tax. Matter was reported to the designated officer/AETC, who issued notices in all the cases and conducted an enquiry. The AETC found that there was an attempt to evade tax and accordingly exercising power under Clause (b) of Sub-section (7) of Section 51 of the VAT Act imposed penalty vide order dated April 13, 2007 (annexure A5). The appeal filed before the DETC-cum-Joint Director Investigation, Jalandhar Division, was also dismissed vide order dated August 9, 2007 (annexure A6). Similar penalties were imposed in the connected appeals vide identical order dated April 13, 2007 and the separate appeals filed were also dismissed vide order dated August 9, 2007. All the appeals arising out of the orders dated April 13, 2007 and August 9, 2007 were dismissed by the Tribunal vide impugned common order dated October 3, 2008 (annexure A8).

4. The appellant-assessee has filed the present appeals proposing to raise the following substantial questions of law:

(i) Whether the Designated Officer at ICC can impose any penalty u/s 51(7)(b) of the Punjab Vat Act, 2005, for an offence committed (if any) under the Central Sales Tax Act, 1956?

(ii) Whether, after the goods are voluntarily reported at the ICC, before exit of the goods from Punjab State, the ICC authorities are authorised to make an enquiry regarding alleged evasion of tax, which is in the domain of the Assessing Authority where penalty u/s 56 can be imposed, if any offence is committed?

(iii) Whether the sale of goods where bills have been issued on March 26, 2007 is complete when the goods are earmarked or delivered to the vehicles for its onward transmission, even if the movement of the goods has taken place on a later date?

5. At the time of hearing issue No. (iii) was re-phrased as "whether it could be said that there was an attempt to evade or avoid payment of tax by mere

delayed movement of goods when the sale invoices/bills had been issued on March 26, 2007, goods were earmarked and goods receipts issued to the vehicles for their onward transmission to the consignees on the same date".

6. The learned Counsel for the appellant-company has argued that the goods were voluntarily reported at ICC Center and all the statutory documents required under Sub-section (2) of Section 51 of the VAT Act were produced there and therefore the designated officer/AETC could not legally exercise jurisdiction under Clause (b) of Sub-section (7) of Section 51 and impose penalty for alleged attempt to evade tax which otherwise falls within the exclusive domain of the assessing authority u/s 56 of the VAT Act, if any such alleged offence is committed. He further argued that when the sale of goods had taken place and sale invoices had been issued on March 26, 2007 and the goods had been earmarked and delivered to the transporter vide valid goods receipt for their onward transmission to the consignee, then in such a situation merely because the movement of the goods had taken place at a later date could not give rise to a presumption that there was an attempt to evade tax incurring any penalty u/s 51(7)(b) of the VAT Act. The learned Counsel further argued that the transactions in dispute were inter-State sales and assuming for the sake of arguments that there was any attempt to evade Central sales tax, even then keeping in view the provisions of Section 51(7)(b) of the VAT Act, the designated officer/AETC could not exercise jurisdiction under the said provision as no tax was due under the VAT Act.

7. Per contra learned Additional Advocate-General appearing for the respondent-State has argued that the Tribunal being the final authority regarding determination of questions of facts and the Tribunal having determined that there was an attempt to evade tax by ante dating the bills/sale invoices, there was no occasion for this Court to interfere u/s 68(2) of the VAT Act. The learned Counsel in support of the findings argued that the fact of issue of 136 bills on March 26, 2007, i.e., the last date before the expiry of exemption certificate coupled with late movement of goods raises an unimpeachable presumption that there was an attempt to evade tax. The learned Counsel by referring to Section 9 of the CST Act further argued that the power and authority to administer and realise Central sales tax has been vested in the State authorities and therefore, in view of the attempt to evade Central sales tax by the assessee-company, the designated officer/AETC had the jurisdiction u/s 51(7)(b) of the VAT Act to impose penalty.

8. Having heard learned Counsel for the parties and giving our thoughtful considerations to the rival submissions we are of the considered opinion that these appeals deserve to be allowed in favour of the appellant-assessee and against the Revenue.

9. Before embarking upon to decide the issues, it would be relevant to refer to the provisions of Section 51(7)(b) of the VAT Act, which are reproduced hereunder:

51. (7)(b) The designated officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under Clause (a) 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 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 be equal to thirty per cent of the value of the goods. In case he finds otherwise, he shall order 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.

10. A plain reading of Clause (b) of Sub-section (7) of Section 51 of the VAT Act makes it clear that the designated officer can impose a penalty equal to 30 per cent of the value of the goods either on the consignor or consignee of the goods if he, after enquiry, finds that there is an attempt to avoid or evade tax due or likely to be due under the Act (the Act is defined under Sub-section (1) of Section 1 to mean the Punjab Value Added Tax Act, 2005). However, before conducting the enquiry the officer is required to serve a notice on the consignor or consignee of the goods detained u/s 51(6)(a) of the VAT Act and give him an opportunity of being heard.

11. It is not disputed that the appellant-company was entitled to tax exemption for a period of seven years with effect from March 27, 2000 to March 26, 2007 for an amount of Rs. 28,50,58,500, whichever was earlier. It is also not in dispute that on March 26, 2007 the appellant-company even after the sale of goods worth the value stated in 136 sale invoices dated March 26, 2007 had an amount of unavailed/un-utilised exemption limit of tax to its credit. It is also not disputed that truck bearing No. JK03A 1334 had on its own reported at the ICC Center on March 30, 2007 and had submitted all the statutory documents to the officer in-charge of the center as required under Sub-section (2) of Section 51 of the VAT Act (likewise all the trucks involved in the connected appeals had also reported at the ICC Center and submitted the required documents). The officer in-charge of ICC Center by exercising the powers under Sub-section (6)(a) of Section 51 of the VAT Act detained the goods since he had reasons to suspect that there was an attempt to evade payment of tax on the ground that there was movement of goods after a delay of four days. It is also apparent that the detaining officer had submitted the proceedings along with the concerned record to the designated officer/AETC for conducting necessary enquiry and passing of an appropriate order under Clause (b) of Sub-section (7) of Section 51 of the VAT Act. The appellant-assessee to the notice issued took the stand that the goods had been sold on March 26, 2007 in pursuance of purchase orders and accordingly sale invoices had been issued, goods earmarked for clearance and goods receipt issued in the name of two local truck unions on the same day for onward transmission of goods. Since the assessee-company enjoyed the exemption on the date of the sale, therefore, no tax was payable and hence there was no question of any attempt to evade tax. The assessee-company also

produced an inspection report dated March 27, 2007 of the excise authorities indicating the clearance of certain goods and issue of last bill bearing No. 3886 dated March 26, 2007. It cannot be disputed that the goods detained in all the connected appeals were sold vide invoices bearing numbers prior to bill No. 3886 dated March 26, 2007. Therefore, this inspection report dated March 27, 2007 from the excise record completely demolishes the stand of the Revenue that the bills/sale invoices had been ante-dated with a view to avoid payment of tax.

12. It is further apparent that the assessee-company has after March 26, 2007 sold and dispatched the goods and has paid tax on the same. It is a different matter that number of such transactions is quite small in comparison to the sale transactions entered upon on March 26, 2007. No evidence has been led by the Revenue to show that the consignees or purchase orders or the goods receipts relating to transaction on March 26, 2007 are fictitious. It has also not been shown that there is any statutory requirement laying down that the goods have to be moved and reported within a particular time-frame before any ICC Center after the issue of sale invoice or goods receipt. It is also not disputed that the movement of goods in pursuance of 136 sale invoices dated March 26, 2007 except the seven involved in the present appeals were cleared by the ICC Centers where also the movement of goods was delayed. The explanation put forth by the assessee for delayed movement is that there was non-availability of the trucks at the time the goods were earmarked to them by the truck union while issuing the goods receipts. There is nothing which prevented the assessee-company from maximizing the exhaustion of its exemption limit to pay tax by March 26, 2007 provided there were genuine purchase orders and goods available for sale. The authorities, merely on account of delayed movement of goods, in the face of the explanation put forth by the assessee, and in the absence of any material on record, in our considered opinion, cannot draw the only irresistible inference that there was an attempt to evade payment of tax. The assessing authority has based its finding of attempt to evade tax simply on the basis of its presumption and suspicion. It is well-settled that strong suspicion, strange coincidences and grave doubts cannot take place of legal proof to sustain a finding of fact refer to *State of Kerala Vs. M.M. Mathew and Another*, . Therefore, the delayed movement of goods by itself is not sufficient to conclude that there was an attempt to evade payment of tax or the bills/sale invoices were ante-dated. Hence, the findings recorded by the Tribunal/authorities under the VAT Act are based on no evidence and are liable to be set aside. Accordingly, the re-phrased question of law No. (iii) is answered in favour of the appellant-assessee and against the Revenue. In view of the fact that question of law No. (iii) has been answered in favour of the assessee, we do not consider it necessary to decide the remaining proposed questions of law. Accordingly, the appeal(s) are allowed and the impugned order dated October 3, 2008 (annexure A8) passed by the Tribunal is set aside and the appellant-assessee is held entitled to the refund of amount of penalty deposited, if any.

13. A photocopy of this order be placed on the files of all the connected appeals.