

(2012) 08 P&H CK 0207

High Court Of Punjab And Haryana At Chandigarh

Case No: VATAP No. 68 of 2011 (O and M)

The Attaire

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Aug. 28, 2012

Acts Referred:

- Punjab Value Added Tax Act, 2005 - Section 42(4), 51(7)(b), 68(1)

Citation: (2012) 54 VST 342

Hon'ble Judges: G.S. Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Sukhdip Singh Brar, for the Appellant;

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

Delay in refiling the appeal is condoned. This appeal has been filed by the assessee u/s 68(1) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated May 19, 2011 passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as, "the Tribunal") claiming the following substantial questions of law :

- Whether, in the facts and in the circumstances of the case, the dispatch of defective goods for refinishing to a dealer would amount to trade and the technical defect render the dealer liable to maximum penalty ?
- Whether, in the facts and circumstances of the case, the invoice/transaction on the letter head of the dealer with complete particulars of consignor and consignee and the ST/Vat numbers can be construed as an attempt to evade tax ?
- Whether, in the facts and in the circumstances of the case, the findings of fact of attempt to evade tax is based on no evidence ?

(iv) Whether, in the facts and circumstances of the case, when the goods were being transported back to the selling dealer for washing and refinishing accompanied by challan, would it amount to evasion of tax ?

(v) Whether, in the facts and circumstances of the case, when the dealer had submitted all relevant documents showing purchase of goods and their import in to Punjab, Stock Register and their dispatch to the Haryana supplier, could the transaction be termed as not covered by proper and genuine documents and an attempt to evade tax ?

2. Briefly stated, the facts for adjudication of the present appeal as narrated therein are that the assessee is a registered dealer and is carrying on the business of sale of readymade garments imported from outside the State. On September 16, 2006, the driver of the vehicle bearing registration No. HR-38H-4886 carrying goods stopped at ICC, Shambu and produced the required documents. However, the goods were detained in the absence of required documents. A show-cause notice was issued to the assessee to appear before the Excise and Taxation Officer on September 18, 2006 and the goods were released against surety bond. On September 18, 2006, the assessee submitted all the relevant documents as shown in the bill/invoice. The matter was sent to respondent No. 2-Assistant Excise and Taxation Commissioner and the assessee appeared before him on September 25, 2006 and explained the matter at length. Respondent No. 2 vide order dated September 29, 2006 (annexure A1) imposed a penalty of Rs. 3,56,750 u/s 51(7)(b) of the Act. Feeling aggrieved against the said penalty, the assessee filed an appeal before the appellate authority who vide order dated July 6, 2010 (annexure A2) dismissed the appeal. Being dissatisfied with the said orders, annexure A1 and A2, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated May 19, 2011 (annexure A3) dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the appellant. The point that arises for consideration in this appeal is whether there was an attempt to evade tax on the part of the appellant.

4. The plea of the appellant that the goods in the shape of readymade garments were being sent back to Gurgaon dealer from whom the same had been purchased for washing and refinishing by trained people of the manufacturers, did not find favour with any of the authorities. The Tribunal while affirming the findings of the authorities below held that only an undated declaration had been filed before the detaining officer. No bill/invoice which might have been issued by M/s. Dhir Global from whom allegedly the appellant had earlier purchased these goods had been produced along with documents from ICC situated on the entry point of Punjab State. The driver of the vehicle was not carrying the delivery challan and the goods receipt. The Tribunal had recorded that the non-production of the books of account and also any bill/invoice to establish its plea, the same gave rise to legitimate presumption and conclusion that the goods were not covered by proper and

genuine documents.

5. The Tribunal came to the conclusion that the appellant had attempted to evade tax. The findings recorded by the Tribunal are as under :

The non-production of bill/invoice, the information got generated at the ICC at the entry point of Punjab, when the goods were first imported into this State, the delivery challan and the goods receipt give rise to a reasonable and legitimate presumption that the goods were not covered by proper and genuine documents and were thus meant for trade and an attempt to evade payment of tax has been made. In *Delhi Assam Roadways Corporation Ltd., Hisar v. State of Haryana* [2001] 123 STC 272 (P&H); [2001] Punjab & Haryana Taxes 418 (P&H), it has been held by the honourable High Court that a presumption can be rebutted by the person concerned by producing evidence to prove that the allegation contained in the notice is incorrect and that in fact no attempt to evade tax had been made. This view has been followed by the Division Bench of the honourable Punjab and Haryana High Court in *Crown Gaskets (India), Bahadurgarh v. Assistant Excise and Taxation Officer, Bahadurgarh* [2004] 137 STC 340 (P&H) ; [2003] 6 STM 753. As per the rule laid down in these authorities, the appellant could have rebutted the above presumption drawn against it by producing the evidence in the nature of documents referred to above. Except the photostat copy of the letter dated September 25, 2006 and the undated declaration, no other document worth mention has been shown by Mr. Brar at the Bar. Thus, the presumption stands unrebutted. As emanates from the impugned orders, the aforementioned documents were also not produced before the authorities below. In such a situation, when there is no evidence operating as rebuttal, how it can be said that the presumption has been rebutted. It was not difficult for the appellant to manage the letter dated September 25, 2006 from M/s. Dhir Global after release of the goods. This letter too appears to be contradictory in itself. In one breath it says that the same (referring to refinishing/repair) is being done and will be able to return back to you duly rectified within this week and in the next breath, it has been said that "we confirm that we have only carried out necessary rectification as required and returning back the materials" when the goods were allegedly imported into Punjab State, the appellant would have accounted for the same in his account books, which have not been produced. The AETC also says so in his order dated September 29, 2006. He could have asked the appellant to produce the books of account in view of the provisions of section 42(4) of the Act. The DETC says in his order dated July 6, 2010 that "In this case, the paper showing return of goods, did not bear any serial number and was not dated even and that an unnumbered and undated paper cannot be relied upon to be proper for such a big transaction." The appellant has not given any explanation for producing a document, which was neither serially numbered nor bore any date. These lacunae coupled with the non-production of the documents referred heretofore, knocks out the bottom of the plea raised by the appellant. Taking into consideration the entirety of facts, it transpires that the

transaction was not covered by proper and genuine documents and an attempt to evade tax has been established.

6. The learned counsel for the appellant was unable to show that the aforesaid findings were perverse or erroneous in any manner. In view of the above, no question of law muchless a substantial question of law arises in this appeal. Accordingly, the appeal is dismissed.