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**(2012) 09 P&H CK 0229**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** VAT Appeal No. 36 of 2012 (O and M)

State of Punjab and Another

APPELLANT

Vs

Desai Brothers Limited

RESPONDENT

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**Date of Decision:** Sept. 26, 2012

**Acts Referred:**

- Punjab Value Added Tax Act, 2005 - Section 51(2), 51(6)(a), 51(7)(b)

**Citation:** (2013) 58 VST 427

**Hon'ble Judges:** Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

**Bench:** Division Bench

**Advocate:** Piyush Kant Jain, A.A.G. Punjab, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Ajay Kumar Mittal, J.

The State is aggrieved by the order dated September 29, 2011, passed by the Value Added Tax Tribunal Punjab (for brevity, "the Tribunal") whereby penalty of Rs. 4,65,092 imposed upon the respondent-dealer u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") has been deleted. Following substantial questions of law have been claimed:

(i) Under the facts and circumstances of the case, whether non-furnishing of the set of documents, viz., bill/invoice and GR at the ICC in respect of the consignment of 370 bags of "bidis" was not indicative of an attempt to evade tax by the respondents?

(ii) Under the facts and circumstances of the case, whether the plea of the respondents that invoice No. 1900505 was inadvertently left by the driver in the truck, was not an afterthought to save them from the penalty, after detection of the default with an intention to evade tax?

(iii) Under the facts and circumstances of the case, whether the findings rendered by the Tribunal in the impugned order are perverse being contrary to facts on record, and therefore not sustainable?

The facts, in brief, as narrated in the appeal may be noticed. On August 1, 2010, the goods comprising of bidis under the brand name of "Desai Bidis" were being transported in Vehicle No. PB 3G-0117. The goods were detained by Taxation Inspector, ICC Kaller Khera as the same were not accompanied by proper and genuine documents. On verification, it was found that in the GR, Invoice-cum-delivery challan and bidi dispatching report, declaration at the ICC was given for 357 bags whereas declaration in form 85 and delivery note in form ELTA-12 showed that the consignment was of 727 bags of bidis of the value of Rs. 32,83,851 and no invoice or GR was furnished for 370 bags of bidis. Accordingly, the goods were detained. Notice of detention was issued to the respondent u/s 51(6)(a) of the Act to show genuineness of the documents accompanying the goods. No one appeared on behalf of the respondent and the matter was referred to the Designated Officer for taking further action u/s 51(7)(b) of the Act. After hearing both the parties and examining the matter, penalty of Rs. 4,65,092 was imposed upon the respondent u/s 51(7)(b) of the Act vide order dated August 23, 2010, annexure A2. Aggrieved by the order, the respondent filed an appeal before the Joint Director (Investigation)-cum-Deputy Excise and Taxation Commissioner, Ferozepur Division, HQ at Bathinda. Vide order dated February 28, 2011, annexure A3, the appeal was dismissed. The respondent filed second appeal before the Tribunal. Vide order dated September 29, 2011, the Tribunal allowed the appeal. As a result the penalty order was set aside. Hence this appeal by the State.

2. The Tribunal while deleting the penalty came to the conclusion that goods receipt No. 157 dated July 26, 2010 in question contained the particulars of 370 bags. It was also recorded that the entries were made in form ELTA-12 dated July 26, 2010 as well as declaration in form 85 wherein there was an entry with regard to 370 bags of desai bidi. Further, the Tribunal observed that the driver had left the invoice No. 1900505 covering 370 bags in the vehicle due to oversight and on being pointed out by the officer on duty, he went back and picked up the remaining documents and produced the same before the officer in-charge. It was further held that leaving behind the said invoice in the vehicle was a human mistake and the transaction was voluntarily reported at the ICC and it was not violative of the provisions of section 51(2) of the Act. It would be advantageous to reproduce the findings recorded by the Tribunal, which are as under:

On examining a large number of documents shown by Mr. Goyal, it transpires that the appellant is a bidi manufacturer at a large scale and is an excisable unit. In the delivery note-form ELTA-12 dated July 26, 2010 against the column of quantity of goods, the number of bags has been recorded to be 727. In this document against column No. 3, bill number 1900505 (disputed one) and bill No. 1900504 both dated

July 26, 2010 have been mentioned. The goods were coming from Kamareddy to Abohar and Maisarkhana as shown in this delivery note, which was voluntarily produced at the ICC. In such a situation, the driver could not afford to hold back bill No. 1900505 deliberately. Further in declaration form 85 dated July 26, 2010 produced voluntarily at the ICC, also against column No. 7, the number of bags had been recorded to be 727. Against its column No. 10, the numbers and date of both the bills have been mentioned. In invoice-cum-delivery challan also invoice No. 1900505 dated July 26, 2010, has been indicated. As per this document, the goods were to be delivered in godown at Abohar. The goods receipt No. 157 dated July 26, 2010 contains the particulars of 370 bags, which are in question. In the bidis dispatching report dated July 26, 2010 purportedly issued by Desai Brothers Limited, Kamareddy, the details of 370 bags have been given. The penalty has been imposed u/s 51(7)(b) of the Act on the ground that the bill and GR relating to 357 bags meant for Maisarkhana were presented at the ICC, whereas the bill and GR for 370 bags meant for Abohar, which falls, on the way, were withheld by the driver intentionally to evade tax on the consignment of 370 bags, though the afore referred documents speak volume of the fact that in no circumstance, the driver could hold back the documents pertaining to 370 bags as in the event of withholding, the officer in-charge at the ICC would have detected that as per form ETLA-12 and declaration form 85 the number of bags is 727. In the given circumstances, it can be safely concluded that clue to his oversight, the driver had left the invoice No. 1900505 covering 370 bags in the vehicle and on being pointed out by the officer on duty, the driver went back and picked up the remaining documents from the vehicle and produced the same before the officer in-charge. If the driver had been hiding under his heart to evade the payment of tax, he would have kept back form ELTA-12 as well as declaration form 85. When all the documents relating to 370 bags were genuine, proper and complete in all respects and the transaction was voluntarily reported at the ICC, it would be treading in the realm of injustice to uphold the penalty. Leaving behind invoice No. 1900505 ibid on the seat, does not seem to be intentional, rather oversight, which being a human mistake was rectifiable and by producing the same within no time before the officer on duty was rectified. The act being attributed to the driver, in no manner, was violative of the provisions of section 51(2) of the Act. Consequently, the penalizing officer was not justified in imposing the penalty u/s 51(7)(b) of the Act, nor the first appellate authority has directed himself in the right perspective by affirming the findings of the officer in-charge-cum-ETO, ICC Kaller Khera.

3. The learned counsel for the State was unable to point out any illegality or perversity except an attempt was made to re-appreciate the evidence and to record a different finding. The view taken by the Tribunal is a possible one and no error could be shown therein. No question of law much less substantial question of law arises in the appeal and the same is dismissed.