

(2010) 08 P&H CK 0435

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Supreme Polytubes Private Ltd.

APPELLANT

Vs

Deputy Excise and Taxation
Commissioner (Appeals) and
Others

RESPONDENT

Date of Decision: Aug. 23, 2010

Acts Referred:

- Punjab Value Added Tax Act, 2005 - Section 51, 51(7), 68

Citation: (2011) 44 VST 98

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the assessee-dealer u/s 68 of the Punjab Value Added Tax Act, 2005 (for short, "the Act") against order dated 29.10.2009 passed by the Value Added Tax Tribunal in Appeal (VAT) No. 495 of 2009, proposing to raise following substantial questions of law:

- a) Whether the concerned officer is empowered u/s 51 of the Act to impose the penalty and to detain the goods or the penalty imposed is beyond jurisdiction?
- b) Whether the penalty imposed is legally sustainable in the presence of each and every documents proving the transaction genuine?
- c) Whether the impugned order is legally sustainable in the eyes of law?

2. On checking by the Excise and Taxation Officer (Mobile Wing), it was found that goods transported by the petitioner did not carry the required documents. It was further found that the Goods Receipts were not genuine. On show cause notice being issued, the dealer failed to produce the books of account. After considering facts and circumstances of the case, a finding was recorded that there was an

attempt to evade tax which attracted penalty u/s 51(7) of the Act. Accordingly, penalty was imposed which has been upheld in the first appeal as well as in second appeal by the Tribunal. The finding recorded by the Assessing Authority is as under:

...It is undisputed that the vehicle in question is owned by the consignor but instead of log book GRs of transport has been used. The dealer has failed to produce the record of the transport company. The detaining officer has placed on the file a GR No. 10262 used by the consignor for transporting goods covered by bill No. 1308 dated 05.01.2008 now the bill No. 1503 and 1504 but the GRs used bear serial number 10577 and 10578. It indicates that there is no regularity in GRs. Inquiries conducted reveal that no such transport company exists at Dhuri. The purpose of GR is to obtain receipt from the transporter/vehicle owner in lieu of handing over of goods for transportation of goods and consignee takes delivery of goods against the GR but the usage of GR where consignor himself owns a vehicle is nothing but a scheme devised not to maintain proper record of transaction. In this case, the dealer has used bill books which have only 25 bills and the bills are issued while dispatching the goods and the same are destroyed as the goods reach destination and no other record is maintained....

3. We have heard Learned Counsel for the appellant.

4. Learned Counsel for the appellant submitted that merely because the goods receipt was fake, inference of attempt to evade tax could not be drawn.

5. We are unable to accept the submission. The finding recorded by the Assessing Authority, reproduced above, shows that not only the GR was fake, the assessee also failed to produce books of account and the manner of issuing the bills also created suspicion about evasion of tax. The finding concurrently recorded by all the authorities is a finding of fact which has not been shown to be perverse.

6. No substantial question of law arises.

7. The appeal is dismissed.