

(2009) 05 P&H CK 0225

High Court Of Punjab And Haryana At Chandigarh

Case No: S.T.C. No. 16 of 2008

Mittal Overseas

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 11, 2009**Acts Referred:**

- Punjab General Sales Tax Act, 1948 - Section 20(1), 22(1), 22(2)

Citation: (2011) 44 VST 308**Hon'ble Judges:** M.M. Kumar, J; H.S. Bhalla, J**Bench:** Division Bench**Advocate:** Sandeep Goyal, for the Appellant; Sudeepti Sharma, Deputy Advocate-General, for the Respondent

Judgement

M.M. Kumar, J.

The dealer-petitioner has filed the instant petition u/s 22(2) of the Punjab General Sales Tax Act, 1948 (for brevity, "the PGST Act") for issuance of direction to the Punjab VAT Tribunal, Chandigarh-respondent No. 3 (for brevity, "the Tribunal") to state the case and refer the questions of law emerging from its order dated August 11, 2003 (P6) passed in Appeal No. 263 of 2000-01. Brief facts of the case are that the dealer-petitioner is registered under the provisions of the Haryana General Sales Tax Act, 1973 as well as Central Sales Tax Act, 1956 at Panipat in the State of Haryana. It is engaged in the business of purchase and sale of jute/HDPE bardana, which is used in packing of rice. On January 16, 1999, the dealer-petitioner made sale of bardana to a Calcutta firm, namely, V. K. Udyog Ltd., which was to be delivered at the factory premises of M/s. Bhagwati Rice Mills, Ferozepur, in the State of Punjab. On January 16, 1999 itself, the dealer-petitioner made another transaction in favour of S.N.T. Agro Industries Ltd., Delhi, and the goods were to be delivered at the premises of M/s. Shiva Rice Mills, Rampura Phul in the State of Punjab.

2. On January 17, 1999, the vehicle and goods were detained by the Assistant Director (Enforcement) Punjab, u/s 14B(6) of the PGST Act on the premise that the Goods Receipt (GR) was not accompanying the documents. On January 18, 1999, the Deputy Director (Enforcement) imposed a penalty of Rs. 60,000 u/s 14B of the PGST Act by arriving at a conclusion that there was an attempt to evade tax (P3). The dealer-petitioner filed an appeal u/s 20(1) of the PGST Act before the Joint Director (Enforcement), Patiala Division, Patiala. The Appellate Authority has recorded a categorical finding that no bill book or any other cogent evidence was produced to prove that sale bill was issued out of regular bill book. The dealer-petitioner also failed to produce original documents. At the time of checking the goods were not covered by trip sheet, log book or goods receipt and documents in favour of the Punjab parties. The appellate authority, accordingly dismissed the appeal while reducing the penalty to Rs. 55,000, vide order dated April 4, 1999 (P4). The dealer-petitioner thereafter filed further appeal before the Tribunal, which was dismissed vide order dated August 11, 2003 (P6).

3. The dealer-petitioner then filed an application u/s 21A(2) of the PGST Act before the Tribunal for rectification of order dated August 11, 2003 (P7), which was dismissed on February 23, 2005 (P9). Feeling aggrieved with the orders passed by the Tribunal, the dealer-petitioner filed CWP No. 17919 of 2005 in this court, which was disposed of on December 13, 2006 by relegating it to avail of alternative remedy of filing reference application u/s 22(1) of the PGST Act before the Tribunal. Thereafter, the dealer-petitioner filed reference application on January 2, 2007 (P10) for referring various questions of law for adjudication of this court. The Tribunal rejected the aforementioned application by observing that the dealer-petitioner was found guilty of evasion of tax and the question of facts were involved, vide order dated July 20, 2007 (P11). Accordingly, the dealer-petitioner has filed the instant petition for directing the Tribunal to refer various questions of law for determination of this court after drawing statement of facts. However, during the course of arguments, learned counsel for the dealer-petitioner has pressed only following two questions as mentioned in para 12 of the petition:

(1) Whether, in the circumstances of the case, there is any attempt to evade tax, which is mandatory requirement for imposition of penalty u/s 14B of the Punjab General Sales Tax Act, 1948?

(2) Whether the dealer has committed any offence by sending the goods sold to Calcutta dealer, to a Punjab dealer on the instructions of the buyer for job-work?

4. Having heard learned counsel for the parties at a considerable length and perusing the paper books with their able assistance, we are of the considered view that the facts are absolutely clear and there is no finding recorded by any of the Revenue authorities that the dealer-petitioner was under obligation to pay sales tax. Once, there is no determination of such nature then the question of evasion would also be a subject-matter of dispute. Therefore, we are of the view that the aforesaid

two questions of law would arise for determination of this court. Accordingly, the Tribunal is directed to refer the aforesaid two questions of law for opinion of this court after drawing statement of facts, attaching copies of all the orders. The paper book should be computer printed as per the provisions of law. The instant petition stands disposed of in the above terms.