

Thermo King India Pvt. Limited Vs Deputy Excise and Taxation Commissioner, Cum Joint Director (INVG.) and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 18, 2012

Acts Referred: Punjab Value Added Tax Act, 2005 " Section 51, 51(2), 51(7), 51(7)(b), 68

Citation: (2012) 54 VST 153

Hon'ble Judges: M.M. Kumar, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Aman Bansal, for the Appellant; Sudeepti Sharma, Deputy Advocate-General, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

The appellant has filed this appeal u/s 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the

impugned orders, annexures A1, A2 and A3 dated June 27, 2006, July 23, 2009 and December 24, 2010, respectively, claiming following

substantial questions of law for consideration of this court:

(i) Whether the impugned orders passed by the learned below authorities without establishing the mala fide intention on part of the appellant in view

of essential ingredients of relevant provision of section 51 are legally sustainable in the eyes of law?

(ii) Whether the act on the part of the learned below authorities to pass the impugned orders without perusing the relevant documents is legally

sustainable in the eyes of law?

(iii) Whether the impugned orders are legally sustainable in the eyes of law?

The brief facts as narrated in the appeal may be noticed. The appellant is engaged in the business of importing and selling of temperature control

units. It along with two other companies, i.e., M/s. ITC Limited and M/s. Snowman Frozen Foods Limited executed a memorandum of

understanding to run supply chain of fresh fruits and vegetables by installing cooling centre. While executing its respective part, the appellant after

importing evaporator unit from USA despatched the same on the address given by M/s. Snowman Food Frozen Limited along with invoice/challan

and with the certificate that the goods were meant for demonstration, trial and not for sale. The goods being transported were accompanied by

proper documents as required u/s 51(2) of the Act. On checking, the goods were detained and vide order dated June 27, 2006, annexure A1

respondent No. 2 imposed penalty of Rs. 16,23,577 holding that the goods were actually purchased by M/s. Snowman Frozen Foods Limited,

Pind Ganna, Phillaur, District Jalandhar and were for trade and thus, there was an attempt to evade payment of tax. Aggrieved by the order, the

appellant filed an appeal before respondent No. 1 which was dismissed vide order dated July 23, 2009, annexure A2. Thereafter, the appellant

filed second appeal before the Tribunal which was also dismissed vide order dated December 24, 2010, annexure A3. Hence this appeal.

2. The learned counsel for the appellant submitted that there was a lease agreement dated March 31, 2006 between M/s. Snowman Frozen Foods

Limited and the appellant and the goods in question which were being sent in the vehicle were not for sale and had been sent for trial and

demonstration purposes to M/s. Snowman Frozen Foods Limited and as such there was no attempt at evasion of tax within the meaning of section

51(7) of the Act. According to the learned counsel, the Tribunal and the authorities below have failed to appreciate the controversy in right

perspective and arrived at a wrong conclusion and thus, substantial questions of law claimed by the appellant arose for consideration in the

circumstances.

3. Controverting the submissions made by learned counsel for the appellant learned counsel for the State supported the orders passed by the

respondents.

4. The Tribunal after appreciating the material on record had arrived at the conclusion that there was an attempt at evasion of tax on the part of the

appellant as M/s. Snowman Frozen Foods Limited was having its business at Find Ganna, Phillaur, District Jalandhar whereas the destination

mentioned in the documents was M/s. Modern Refractories, Village Ikoloha, District Ludhiana which were reported by the driver of the vehicle at

the ICC. The Tribunal further noticed that there was no mention of place of start of any industry between the appellant and M/s. Snowman Frozen

Foods Limited in the agreement and addition of additional place of business in the registration of M/s. Snowman Frozen Foods Limited at Village

Ikoloha was made much after the interception of the goods by the Department. The documents also revealed that the goods were in the name of

M/s.. Modern Refractories and name of M/s. Snowman Frozen Foods Limited was nowhere depicted on the same. Under the circumstances, the

documents could not be held to be genuine and the penalty had been rightly imposed u/s 51 (7)(b) of the Act. The findings recorded by the

Tribunal read thus:

When the driver incharge of the vehicle reported at the ICC, he had invoice in favour of Modern Refractories of Ikolaha, Khanna Maierkotla

Road. The GR for transporting the goods was for Ludhiana. Name of Snowman Frozen Foods Limited was nowhere in the invoice. Snowman

Frozen Foods Limited had their registered office in Find Ganna, Phillour District Jalandhar. It was quite far away from Ikolaha-Khanna Maierkotla

Road, Ludhiana where the goods were to be unloaded. There was no indication that the goods were meant for Snowman Frozen Foods Limited.

The consignor was Therrnoking India Pvt. Limited. Even if there was an agreement in between Therrnoking India Private Limited and Snowman

Frozen Foods Limited for starting some business or industry in Punjab, the place of start of that industries has not been mentioned in the

agreement. Application for adding additional place of business in the registration of M/s. Snowman Frozen Foods Limited at village Ikolaha was

made much later after the goods had been intercepted. Modern Refractories in whose name the invoice is, is third party and the documents

nowhere showed that the goods were meant for Snowman Frozen Foods Limited. When, enquiry started still agreement between Thermoking

India Private Limited and Snowman Frozen Foods Private Limited was not shown. However, one vehicle reported on June 7, 2006 whereas the

other vehicle reported on June 26, 2006 at the ICC whereas there was one GR and one invoice. The only conclusion which could be arrived at

was that the documents were not genuine. The name of Snowman Frozen Foods Private Limited and its registration number was not there on the

documents and it was not disclosed. As such the transaction could go unaccounted.

5. The findings recorded by the Tribunal having not been shown to be erroneous or perverse in any manner, no question of law much less

substantial question of law arises in this appeal. Finding no merit in the appeal, the same is dismissed.