Merino Panel Products Limited Vs Sales Tax Tribunal II

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 16, 2014

Acts Referred: Constitution of India, 1950 â€" Article 226, 227

Citation: (2014) 176 PLR 687 : (2014) 74 VST 363

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Sandeep Goyal, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate-General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.
This order shall dispose of C.W.P. Nos. 8689 and 10940 of 2002, as according to the learned counsel for the

parties, the issue involved in both the petitions is common. However, the facts are being extracted from C.W.P. No. 8689 of 2002. Prayer in

C.W.P. No. 8689 of 2002 filed under article 226/ 227 of the Constitution of India is for issuance of a writ of mandamus to quash the order dated

May 19, 2001, annexure P13, passed by the respondent-Excise and Taxation Officer and for cancellation of penalty upheld by the Sales Tax

Tribunal, vide order dated January 14, 2002, annexure P18.

2. A few facts relevant for the decision of the controversy involved, as narrated in C.W.P. No. 8689 of 2002 may be noticed. The petitioner is a

dealer registered under the provisions of the Haryana General Sales Tax Act, 1973 (in short, ""the HGST Act"") as well as Central Sales Tax Act,

1956 (in short, ""the CST Act""). It is engaged in the business of manufacturing of laminated sheets. It is maintaining regular books of account and

other relevant record. The petitioner has many imported plants and machinery which are repaired in India during the normal course of wear and

tear. Press moulds/S.S. plates being the same thing made of stainless steel are also the capital goods under the head of plant and machinery which

are used to give particular finish to the laminates and need repolishing after use in the press. This work is also done by SESA MSF Pvt. Limited,

Neemrana, Rajasthan (""M/s. Sesa"", in short). The petitioner imported press moulds/S.S. plates from various foreign companies. On April 27,

2001, the petitioner-company sent certain goods for the purpose of repair to M/s. Sesa. For this purpose, the petitioner issued challan, annexure

P1 as provided under the Central Excise Rules, 2002. The value of the goods was estimated to be Rs. 12 lacs. The petitioner was supplied form

ST-18-A, annexure P2, issued by the Government of Rajasthan to M/s. Sesa as provided under the provisions of the Rajasthan Sales Tax Act,

1994. The petitioner itself also issued form ST 38, annexure P3, prescribed under the Haryana General Sales Tax Rules, 1975 (in short, ""the

HGST Rules"") by the Government of Haryana. All these three papers were accompanying the goods when these were sent for necessary repair,

etc., to M/s. Sesa on April 27, 2001. After repair when these goods were in transport, the Excise and Taxation Officer, checked the vehicle and

the goods on May 17, 2001 at 3.30 p.m. and detained the same on the ground that ST 38 form produced was blank and the goods were not

covered with genuine and proper documents as required under section 37(2) of the Act. After the goods were detained vide notice, dated May

17, 2001, annexure P7, the petitioner-company''s representative appeared before the authority and produced copies of documents showing the

import of the material regarding plant and machinery, purchase order and commercial invoice. After examining the matter, the Excise and Taxation

Officer (ETO) imposed penalty of Rs. 3,60,000 vide order dated May 19, 2001, annexure P13. Aggrieved by the order, the petitioner filed

appeal before the Joint Excise and Taxation Commissioner (A), Vide order dated August 27, 2001, annexure P17, the appeal was dismissed and

the order of the ETO was upheld. The petitioner filed further appeal before the Tribunal. Vide order dated January 14, 2002, annexure P18,

impugned herein, the appeal was partly allowed, reducing the penalty from Rs. 3,60,000 to Rs. 1,80,000. It was observed that though the

petitioner was an exempted unit, yet the requirement of carrying a duly filled ST 38 form was binding. Hence the present petition by the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner-unit was exempted from payment of tax under section 13B of the HGST Act

and therefore, there was no attempt to evade tax under section 37(6) of the Act. The original form ST-38 which was to be filled by the consignee

dealer of Haryana before sending it to Rajasthan was inadvertently missed as all the information was with the said dealer. It was urged that there

was no mens rea on the part of the petitioner to evade tax in view of judgments of this court in Delhi Assam Roadways Corporation Ltd. v. State

of Haryana [2001] 123 STC 272 (P & H) and Crown Gaskets (India) Vs. Asstt. Excise and Taxation Officer and Another, . There being no

attempt to evade tax, penalty sustained by the Tribunal was uncalled for.

4. On the other hand, learned counsel for the State supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties, we find merit in the contentions of learned counsel for the petitioner.

6. This court in Crown Gaskets (India) Vs. Asstt. Excise and Taxation Officer and Another, , while dealing with identical issue had recorded as

under (pages 343 and 344 in 137 STC):

1. From the perusal of the above, it would be clear that the Sales Tax Tribunal had found it as a fact that the purchases and sales made by the

petitioner were not leviable to tax under the Haryana General Sales Tax Act, 1973 and that at the time when the goods were detained, the

petitioner had requested the officer detaining the goods to verify the documents with the material in all respects before the release of the goods and

that the presumption could be rebutted by the person concerned by producing evidence to prove that the allegations contained in the notice were

incorrect and that in fact, no attempt to evade the tax had been made. The Tribunal itself having found that the purchases and sales made by the

petitioner were not leviable to tax under the Act, in our opinion, there would be no occasion to say that there was any attempt to evade the tax due

under the Act. As referred to above under section 37(6) of the Act, penalty could be imposed only if after inquiry the officer finds ''that there has

been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods . . ., a penalty of not less than fifteen per

cent, and not more than thirty per cent, of the value of the goods and in case he finds otherwise, he shall order the release of the goods''. If the

sales and purchases made by the petitioner were not leviable to tax under the provisions of the Act, it could not be said that there had been any

attempt to evade the tax due under the Act. That being so, there would be no question of imposing penalty, even minimum penalty, on the

petitioner merely because at the time of checking required documents were not with the truck driver. This is especially so when it is found by the

Sales Tax Tribunal itself that the petitioner had requested the officer detaining the goods to verify the documents with the material in all respects

before the release of the goods. Under these circumstances, in our opinion, the respondents were not authorized to impose any penalty upon the

petitioner. On the other hand, the respondents were duty-bound to release the goods without imposition of any penalty. The authority in Delhi

Assam Roadways Corporation Ltd. Vs. State of Haryana and Another, relied upon by the learned counsel for the respondents, in our opinion

would have no application to the facts of the present case. Non-production of challan duly filled in before an officer checking the goods may be a

sufficient reason to believe that the person transporting the goods was attempting to evade the tax due under the Act, but that would be only in

those cases, where tax is leviable under the provisions of the Act. However, where the sales and purchases were not leviable to tax under the

provisions of the Act (as found in this case by the Sales Tax Tribunal), it could not be said that the person transporting the goods was attempting to

evade the tax due under the Act. This is especially so when as laid down in the Delhi Assam Roadways Corporation Ltd. v. State of Haryana

[2001] 123 STC 272 (P & H) : [2001] 17 PHT 418 (P & H), the presumption can be rebutted by the person concerned by producing evidence

to prove that no attempt had been made to evade payment of tax. Thus, the law laid down by this court in Delhi Assam Roadways Corporation

Ltd. v. State of Haryana [2001] 123 STC 272 (P & H) : [2001] 17 PHT 418 (P & H) would have no application to the facts of the present case.

7. A perusal of the aforesaid clearly shows that where there was no liability to pay tax under the Act, there would be no occasion to infer that there

was any attempt to evade tax under the Act. In the present case, it was not controverted that the petitioner was an exempted unit. Though there

was a technical defect in not producing form ST-38 but there was no attempt to evade tax. Once that was so, sustaining of penalty under section

37(6) of the Act by the Tribunal was unjustified. Accordingly, the writ petitions are allowed. The penalty imposed against the petitioners is set

aside.