IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 43 of 2015 (O&M)
Date of decision: September 30, 2016

M/s Manju Sanitary Wares

.. Appellant

v.

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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Rajesh Bindal J.

The present appeal has been filed raising the following substantial questions of law arising out of the order dated 9.4.2005 passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') in Appeal No. 243 of 2012:

"(i) Whether on the facts and circumstances of the case, the appellant has made any attempt to evade the tax even though Entry Tax had been deposited in the account of person who has to hand over money to the driver even before the goods have been detained ?

(ii) Whether on the facts and circumstances of the case, the findings recorded by the appellate authority and Tribunal are perverse in nature inasmuch as they have recorded that the goods had been detained at 10.52 AM, whereas the detention order records it to have been detained at 12.30 PM ?

(iii) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty under Section 51(7)(c) whereas the goods and vehicle were still within the premises of ICC ?"

Learned counsel for the appellant submitted that in the truck bearing No. RJ-31-GD-0770, two consignments from two different consignors for two different consignees were loaded. The destination was Moga. The goods imported were excisable. These were purchased by the appellant on concessional rate of tax against form 'C'. In one of the consignments, the consignee was M/s Manju Sanitary Ware, namely, the appellant, whereas in the other, the consignee was M/s Manju Enterprises. Statutory form No. 402 for export of goods outside the State of Gujarat was generated for both the consignments. The goods were declared at Information Collection Centre, Sito Gunno. The entry tax leviabe for one consignment imported by M/s Manju Enterprises was deposited by the agent, whereas for the second consignment, there was some delay as the amount was yet to be transferred by the appellant in the account of the agent. A certificate issued by the banker of the appellant regarding transfer of amount in the bank account of the agent has been produced. The goods were detained at the check post. The driver was coerced to sign on blank papers. Despite the appellant producing all the documents and showing the genuineness of the transaction, penalty was levied, which was upheld in appeal by the first appellate authority as well as the Tribunal.

The submission is that when the vehicle was still at the barrier, documents of both the consignments were with the driver, there was no question of non-declaration of one consignment. The purchase was on concessional rates against statutory form 'C'. In case, the goods are not entered in accounts of the appellant, he will have to pay higher rate of tax to Gujarat dealer, hence, there was no benefit to evade tax. The record was produced to show that the transaction was entered in the books of accounts and even statutory form 'C' was also issued.

On the other hand, learned counsel for the State submitted that the vehicle reported at the check post at 10.52 AM, when one consignment was declared and tax due thereon was paid. As the goods loaded in the vehicle were found to be more than what mentioned in the documents produced, the officer at the check post got suspicious and checked the consignment. It was during that process that it could be found out that there was second consignment as well, which was not declared. The transfer of money in the account of the agent and non-deposit thereof at the check post at the initial stage, is merely a story concocted by the appellant. Such an agent is not recognised in law. It is a private arrangement of the appellant. Once, according to the appellant, the agent had deposited the tax for one consignment, when it was declared at the check post at 10.52 AM, the other consignment could also be declared and tax paid. The amount was not huge. It is only after the detention of the goods that the process for deposit of money in the account of the agent started for creating evidence. The amount transferred by the appellant in the account of the agent does not tally with the amount of tax involved. Three authorities have already gone into the issue. No interference is required at this stage as no substantial question of law arises.

Heard learned counsel for the parties and perused the paper book.

The fact that there were two consignments originating from two consignors meant for two different consignees in the same vehicle is not in dispute. The vehicle reported at the check post at 10.52 AM, when the entry tax due thereon in case of one consignment was deposited. The consignee therein was M/s Manju Enterprises. The appellant is sister concern thereof. It is not in dispute that tax for the consignment in question was not deposited at the same time. The story put by the appellant claiming that the amount could not be deposited as it was transferred in the account of the agent late is merely to be noticed and rejected. The appellant claimed that the amount was transferred in the account of the agent before 11.00 AM, however, it was reflected in his account late. The fact was got verified by the first appellate authority from the banker of the appellant and it was revealed that the amount was deposited in cash at 12.27 PM. Still further, the amount deposited in the account of the so-called agent was ₹ 42,500/-, whereas the amount of tax due on both the consignments, which was to be deposited at the barrier, was ₹ 43,170/-, hence, even the amount also did not tally. Further, if the agent could deposit the amount of tax for one consignment before the amount was deposited by the appellant in his accounts, he could very well deposit the same for the second consignment as well. The process for deposit of money started only after the goods were detained and were in the process of verification to create evidence.

For the reasons mentioned above, we do not find that any substantial question of law arises in the present appeal. The findings recorded by the authorities below cannot be said to be perverse. The appeal is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

September 30, 2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No