

Gurbax Singh
2017-05-10 11:37

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**VATAP No. 1 of 2017 (O&M)
Date of decision: 01.05.2017**

M/s International Cars and Motors Limited

.....Appellant

Vs.

The State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. G.R Sethi and Mr. Varun Chadha, Advocates
for the appellant-assessee.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, “ the Punjab VAT Act) against the order dated 21.10.2016, Annexure A.9, passed by the Value Added Tax Tribunal, Punjab, Chandigarh (in short, “the Tribunal”)in Appeal No. 528 of 2015, claiming following substantial questions of law:-

(a) “Whether on the facts and in the circumstances of the case, AETC, ICC (Exports), Shambu is competent Designated Officer to impose penalty under Section 51 of the PVAT Act, 2005?

(b) Whether on the facts and in the circumstances of the case, penalty under Section 51(6)/51(7)(c) has been rightly imposed when there was no attempt to evade the tax and the substituted sub-section was made effective from 15.11.2013 particularly when the sale invoices furnished were true and genuine?

(c) Whether on the facts and in the circumstances of the case, it was imperative for the Hon’ble Tribunal to have noticed,

considered and determined the written submissions made before the Enquiring Officer, Affidavit of driver and other documents produced before him?

(d) Whether in the facts and in the circumstances of the case, the impugned order is liable to be set aside when the material on the record has not been considered?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee, a company, is engaged in the manufacture and sale of multi-utility vehicles (Rhino brand) at Amb District Una, Himachal Pradesh. It has a branch at Hoshiarpur which is registered as a taxable person under the Punjab VAT Act and the Central Sales Tax Act, 1956 (C.S.T. Act). On 7.10.2008, the appellant company sold parts worth ₹ 8217/- to M/s Natasha Automobiles Private Limited as per their order received on the internet. On 8.10.2008, the company sold one engine of multi-utility vehicle (Rhino) valuing ₹ 2,03,544/- to the same company. Both the sales were on credit against ‘C’ forms and the payments were received through banks. Due to urgency of purchasing company, the goods covered by both the invoices were dispatched by an hired Innova Car. The driver was entrusted with both the invoices for the goods and form XXXVIII received from the buyer company with the instructions to get the sale invoices recorded at ICC, Shambhu. The driver of the Car being not conversant missed export ICC and reached Toll Tax collection center. At the ICC (Exports), Shambhu there was no erected boom barrier. There was no entrance gate on the side of the road wherein the office was setup. He was not stopped or any signal to stop was made at ICC. He enquired from the policeman standing nearby at Toll Plaza at ICC. The driver and the policeman both reached ICC voluntarily. He parked the car near the gate and voluntarily produced

invoices dated 07.10.2008 and 08.10.2008. The Detaining Officer detained the vehicle and the Enquiring Officer imposed penalty of ₹ 1,05,881/- vide order dated 22.10.2008. The appellant company is maintaining computerized system of accounts and the sales invoices in question were computer generated invoices. In this system, the moment an invoice is generated from computer, it is simultaneously posted in the various heads of accounts including the account of the purchasing party. The Central Sales Tax leviable was duly charged in the invoices and debited to the party account. Thus, there was no question of any attempt to evade or avoid C.S.T. which was already charged and deposited in due course. M/s Natasha Automobiles Private Limited is an old customer of the appellant company. Total sales worth ₹ 62,64,914/- were made to them from 01.04.2008 to 10.10.2008 against 'C' forms and due tax was paid. Sales worth ₹ 5,39,128.31 were made by branch at Hoshiarpur and sales worth ₹ 57,25,785.69 were made from Amb, District Una, Himachal Pradesh. Aggrieved by the penalty order, the assessee company filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) (DETC[A]). Vide order dated 30.04.2015, Annexure A.8, the DETC (A) dismissed the appeal filed by the assessee. Still not satisfied, the assessee filed an appeal before the Punjab VAT Tribunal. Vide order dated 21.10.2016, Annexure A.9, the Tribunal dismissed the appeal. Hence, the instant appeal by the appellant-company.

3. We have heard learned counsel for the appellant-assessee.

4. A perusal of the order dated 21.10.2016, Annexure A.9, passed by the Value Added Tax Tribunal, Punjab shows that with regard to substantial question No. (a) whether Assistant Excise and Taxation Commissioner (AETC) ICC (Exports), Shambhu is competent Designated

Officer to impose penalty under Section 51 of the Punjab VAT Act, no such argument was raised by the appellant-company before the Tribunal. Thus, no finding has been recorded by the Tribunal on this issue. With regard to substantial questions of law (b) to (d), findings of fact have been recorded by the Tribunal. It has been categorically recorded by the Tribunal that the assessee had placed reliance on the affidavit of Mr. Sarabjit Singh, driver who was driving the vehicle at the relevant time. He himself had admitted through his affidavit that he had crossed the ICC without generating the information. It was further recorded that it was not the first transaction and even prior to that, the goods were being taken through that way. Thus, the mere excuse that the driver did not know about the location of the ICC, was not accepted. Further, the goods were carried away through a vehicle which was not used for carrying the goods. Consequently, the Tribunal rightly concurred with the findings recorded by the authorities below and dismissed the appeal filed by the appellant-assessee. The relevant findings recorded by the Tribunal read thus:-

“Arguments heard. Record perused.

The appellant was carrying excisable goods in an Innova Car and not in a goods carrier. The appellant has placed reliance on the affidavit of Sarabjit Singh, Driver who was driving the car at that time but this affidavit goes against the appellant, because he has admitted through his affidavit that he had crossed the ICC without generating the information. The mere excuse, that he did not know about the location of the ICC, does not help the case of the appellant as even according to the company, it was not first transaction and even prior to that, they were taking the goods through that way. On perusal of the statement of accounts, it transpires that they passed through that way even on 30.09.2008 and 07.10.2008 and prior to that also, they were frequently passing through the said highway. In

these circumstances, the appellant can't be said to have no knowledge of the location of the ICC, the said excuse is nothing but a device to get rid of the charges against him. The intention of the appellant to avoid the tax is further strengthened from the fact that the goods were carried away through a vehicle which was not used for carrying the goods.

Having perused both the orders passed by the authorities below, the same appear to be well founded and well reasoned and do not call for any interference at my end.”

5. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings of fact recorded by the Tribunal on questions (b to d). Thus, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 01, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes