IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 174 of 2017
Date of decision: 25.2.2020

M/s Anjali Kitchenware Pvt. Ltd.
.. Appellant

v.

The State of Punjab and another
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

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AVNEESH JHINGAN, J.

The present appeal is filed under Section 68 of the Punjab Value Added Tax Act, 2005 (for short, 'the Act') against the order dated 26.8.2016 passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') claiming following substantial questions of law:

“(a) Whether on the facts and circumstances of the case, the authorities below have rightly invoked the provisions of Section 51 of the PVAT Act, 2005 and imposed penalty when the goods were voluntarily reported at ICC and therefore cannot remain unaccounted in the books of accounts?

(b) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty U/s

51(7) when the goods in question were voluntarily reported on its entry into the State of Punjab at ICC and were also reported at Himachal Pradesh tax barrier while making exist from Himachal Pradesh ruling out any possibility of keeping the transactions out of books?

(c) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty U/s 51(7) where the goods in question i.e. Pressure cookers were not meant for trade as the purchasing dealer was a pharmaceutical company which is not engaged in the sale and purchase of pressure cookers?

(d) Whether under the PVAT Act, 2005, it is obligatory upon the incharge of vehicle to carry documents issued by seller of goods where goods have been dispatched from the premises of a third party whose documents are duly accompanied with the transaction?

(e) Whether the penalty U/s 51(7) can be upheld where there is a mistake in the documents without there being any attempt to evade tax?

(f) Whether a penalty U/s 51(7) of the Punjab VAT Act, 2005 can be imposed where the transaction involved tax under the Central Sales Tax Act, 1956 which is payable to the State of Himachal Pradesh?

(g) Whether in the facts and circumstances of the case, penalty under Section 51(12) of the Act can be imposed when the goods were accompanied with a valid sale invoice No. 38 dated 2.5.2012 having complete particulars of the seller and buyer along with their CST number?”

The brief facts are that on 3.5.2012, vehicle No. HP12-4111 was detained at ICC Zirakpur as the Detaining Officer suspected genuineness of the transaction. The driver produced invoice No. 38 dated 2.5.2012 issued by M/s Pritam International, Baddi (hereinafter described as 'seller') in favour of M/s Anjali Kitchen Wares Pvt. Ltd., Mumbai; GR No. 25453 dated 2.5.2012 showing destination from Baddi to Zirakpur and declaration in Form VAT XXVI-A of Himachal Pradesh showing consignee as M/s Anjali Kitchen Wares Pvt. Ltd., Dera Bassi. The driver stated that the goods i.e. pressure cookers were to be unloaded at Dera Bassi. No document issued by M/s Anjali Kitchen Wares Pvt. Ltd. in favour of dealer of Dera Bassi was produced either at the time of checking or during penalty proceedings. Penalty of ₹2,40,124/- was imposed under Section 51(7)(b) read with Section 51(12) of the Act. Aggrieved of the order, appeal was filed which was dismissed on 30.1.2013. Further appeal filed before the Tribunal met with the same fate on 26.8.2016.

Learned counsel for the appellant argued that a purchase order was received from M/s Alkem Laboratories Ltd., Mumbai (hereinafter described as 'purchaser') for supply of 1200 pieces of five litres pressure cookers. The cookers were purchased from the seller and these were being delivered to the purchaser at Dera Bassi. It is argued that the seller while making sales to the appellant had charged 1% CST and there was no attempt to evade tax, at the most it was a case of faulty documents. It is further argued that Section 51(12) was wrongly invoked in the facts of the present case.

Learned counsel for the State defended the orders and submitted that there was no document for sale being made to the purchaser in Punjab. It is further submitted that at the time of checking, the purchase order was not accompanying the goods and it was a clear case of selling the goods without issuing the bills.

Section 51(12) of the Act is quoted below:

> "**SECTION 51. ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POSTS AND INSPECTION OF GOODS IN TRANSIT:**
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> xx xx xx
>
> (12) Where a transporter fails to give information as required under sub-section (2) about the consignor or consignee of the goods, within such time, as may be specified, or transports the goods without documents or with ingenuine documents, he shall be liabile to pay, in addition to the penalty leviable under this section, the tax due on such goods of the VAT rate applicable under this Act."

There is no dispute on the fact that there was no document accompanying the goods whereby it was evident that the appellant had made sales to purchaser in Punjab. The stand taken that there was an advance purchase order does not enhance the case of the appellant, the purchase order was not accompanying the goods. Moreover, in case the position had been so, the invoice issued by the seller would have at least mentioned that the goods to be delivered to the purchaser at Dera Bassi whereas the invoice was issued in the name of the appellant at Mumbai. The destination as per the GR was different than stated in the invoice. Even in the declaration filed at Himachal barrier, the name of the consignee given was as appellant. It would be pertinent to note that even after detention of goods, no bill/invoice issued by the appellant in favour of the purchaser was produced. It was only first time before the Tribunal that one invoice was produced. The goods were not specific goods for purchase but were general pressure cookers. The facts are self evident that the transaction between the appellant and the dealer in Punjab was without any documentation. The penalty has been levied and upheld considering the facts and the evidence before the authorities. The questions raised for challenge to the penalty are factual issues. No case is made out for interference in penalty under Section 51(7)(b).

However, in the present case Section 51(12) could not have been invoked. The said provision comes into play only when the transporter fails to give information about the consignor or the consignee, but in the present case the documents produced at the time of checking gave the details of consignor and consignee. The penalty under Section 51(12) is quashed.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

25.2.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No