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

VATAP-41-2011 (O&M)
Date of decision:- 11.04.2023

M/s Sharda Solvent Ltd ....Appellant

vs.

State of Punjab and anr. ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE AMARJOT BHATTI**

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

Mr. Saurabh Kapoor, Addl.A.G. Punjab

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**Ritu Bahri, J.**

The present appeal has been filed under Section 68 of the Punjab Value Added Tax Act, 2005 (for short 'Act 2005') seeking setting aside of order dated 01.11.2010 (A-7).

The case in brief is that the appellant-Company is a dealer registered under Rajasthan Vat Act as well as the Central Sales Tax Act and is engaged in trading of gram and made inter-state sale with consignee, M/s Mundwala Enterprises at Abohar.

The goods from the consignor at Rajasthan were to be unloaded at Godowns taken on lease by consignee, vide lease agreement at Village Kallar Khera and Usman Khera (both villages falling within Tehsil Abohar). This information was also provided to the concerned department, Abohar vide VAT-5 dated 13.08.2009 (A-2) i.e days prior to the movement of consignment from Rajasthan to Punjab. On 19.08.2009, the Excise and Taxation Officer, Bathinda (Mobile Wing) checked the seven trucks loaded with Gram vehicle, which was stationed and was being unloaded in the premises of M/s Shri Radhey Krishan Wheat Products (P) Ltd Kallar Khera. The driver of the vehicle produced the following documents:-

(i) Invoice

(ii) G.R. and

(iii) Form 49 (issued by Rajasthan Government)

From the perusal of the documents, it was found that the consignee was M/s Mundwala Enterprises, Abohar but the goods were being unloaded at the premises of M/s Radhey Krishan Wheat Products (P) Ltd, Kallar Khera. The drivers of the vehicles stated that they had been directed to deliver the goods at the premises of M/s Radhey Krishan Wheat Products (P) Ltd, Kallar Khera. The genuineness of the transaction was suspected and goods were detained. A notice was issued to the consignee but none appeared. The detaining officer then referred the matter to the Designated Officer for action under Section 51 (7) (b) of Act 2005. Then Rajnish Goyal, Chief Trader of the Consignor-firm of the petitioner-Company appeared and claimed the ownership of the goods. He explained that there was some stock exchange for storage of the food grains in the State of Rajasthan, so the Gram lying in the stock in excess was sold out to the dealers of Abohar. It was further explained that the godowns from M/s Shri Durgeshwari Foods, Usman Khera and M/s Radhey Krishna Wheat Products (P) Ltd., Kallar Khera for storage of Gram had been taken by the consignee and this information was given to the Designated Officer, Abohar for using those premises as Godown but no explanation was given as to why proviso of section 51(2) and section 51(4) of the ICC were not complied by making declaration at the ICC. The consignee was that of Abohar and there was no good ground to take Godowns of M/s Radhey Krishna Wheat products (P) Ltd., Kallar Khera and at Usman Khera at a distance of more than 30 Kms. The Designated Officer was of the view that the documents were not genuine and there had been an attempt to evade tax. Penalty of Rs. 11,57,404 was imposed u/s 51(7)(b) of the Punjab VAT Act, vide order dated 03.9.2009 of AETC (MW) Bathinda (A-4).

Feeling aggrieved against this order, the appellant preferred an appeal, which was dismissed on 30.03.2010 (A-5). The appellant went in appeal against order dated 30.13.2010 and the same was also dismissed on 01.11.2010 (A-7). Hence, the present appeal.

Learned counsel for the appellant submits that the impugned penalty has been imposed only on the ground that the consignee had hired the godowns in a remote site with an intention to evade the payment of tax as the site was beyond ICC. Further the impugned order dated 01.11.2010 (A-7) upholds the detention and penalty thereof ordered by the AETC, primarily on two grounds, one being non-reporting of driver at ICC and other ground being that godowns are intentionally chosen which fall outside the route of ICC leading to an attempt to evade tax.

At the very outset, learned counsel for the appellant submits that the sale in the present case was an inter state sale. The invoice dated 17.08.2009 (A-1 colly) was issued with due rate of CST. Reference has further been made to Form VAT-49 (A-1 colly) issued to the appellant, which was declaration issued by the Rajasthan Government carrying the goods outside the state. This fact was mentioned on the invoice (A-1 colly) to carry with the consignment for delivery at the agreed places.

Learned counsel for the appellant further submits that there is a provision of Section 51 of act 2005 as to reporting at ICC. It has been submitted that mere non declaration at ICC is no conclusive proof of intention to evade tax when the necessary documents are duly produced.

Reference has been made to a case of ***Krish Pack Industries v SOP (2006) 28 PHT 27(P&H)***. The operative part of the judgment reads as under:-

> *"......Only contention raised on behalf of the petitioner is that the Appellate Authority as well as the Tribunal have not considered the explanation of the petitioner that there was no attempt to evade tax, though entry at ICC had not been made. It is submitted that mere absence of entry at ICC could not be taken as conclusive for imposing penalty. Explanation of the petitioner ought to have been considered not only by the Assessing Authority but also by the Appellate Authority and the Tribunal. In the explanation, it was stated that the consignment was accompanied by proper and genuine documents and no mens rea was made out. Reliance is placed on judgment of this court in Amrit Banaspati Company Ltd v State of Punjab, (2001) 17 PHT 141(P&H)*
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> *Learned counsel for the Revenue referred to para 3 of the impugned order of the Tribunal upholding penalty with the observation that the driver had admitted short comings in the documents.*
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> *We have considered rival submissions and perused the record.*
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> *The Tribunal has not looked into the documents available on record to record a finding that any attempt of evasion was made or that the documents were not genuine and has merely gone by the alleged admission of the driver. Since the*

*documents are available on record, the said documents ought to be examined by the Tribunal......”*

Reference has further been made to a case of ***State of Punjab and anr. v Hindustan Steel Industries 2009 SCC Online P&H 11717***. The operative part of the judgment reads as under:-

*".....2. It is, thus, evident that a copy of sale invoice and GR accompanying the goods were produced by the driver at the very time of interception by the mobile wing.*
*3........ The Tribunal has concluded that in the absence of any evidence regarding non-payment of tax, merely avoiding of route does not constitute basis for the Revenue to conclude that the attempt of evasion must be presumed the moment the driver of the vehicle deviated from a particular route........"*

Reference has further been made to a case of ***State of Punjab and anr. v Shree Ram Panels (2011) 46 VST 424.*** The operative part of the judgment reads as under:-

*"1.............b) Whether it was mandatory on the part of the drivers of the vehicles to voluntarily stop at the ICC and give information of the Inter-State transaction for getting form VAT XXXVI generated and by not doing so, an attempt to evade the tax was made?*

*4......."The drivers Incharge of the vehicle had GRs and Invoices with them. Goods were to be loaded in the Railway from Dappar but were to go to Dappar by road. All the area from Shahpur to Dappar falls within Punjab. On the invoice, container number and seal used on the container was mentioned. The goods were to go in the same container after those were put on Railway Wagons. CST as applicable had been charged. C forms have also been received. In the facts and circumstances of the case, Lam of the view that* *mere non-reporting at the ICC. Banur and not making declaration in the prescribed form could not lead to conclusion that there was violation of Section 51(4) of the Punjab Value Added Tax Act with a view to do an attempt to evade tax. As such, this appeal is accepted. Order of the authorities below are set aside."*

Reference has further been made to a case of ***Ganpati Foods v State of Punjab and anr. (2014) 67 VST 348*** . The operative part of the judgment reads as under:-

*"1.....v) Whether mere non declaration of goods at entry point in ICC Punjab can result in imposition of penalty under Section 51(7) (c) of the Punjab VAT Act 2005, when at the time of checking of the goods, the driver has produced all the documents including Bill, goods receipt, Exit form of Haryana as well as the Insurance Policy for the goods and those documents have not been found ingenuine?*

*5. In the present case, there is a dispute about verification of documents accompanying the goods. Case of the appellant is that the goods in question were duly accompanied by the invoice/GR, statutory form VAT D.3 and the Insurance policy. Further, there was stamp of ICC at Shambhu on the GR. The driver out of Ignorance being illiterate did not generate the declaration at the ICC. The Tribunal without examining the authenticity and veracity of these documents has on suspicion concluded that there was an attempt to evade tax on the part of the appellant. In view of the aforesaid documents, no conclusion could be drawn that the declaration was not obtained with a view to evade tax unless the documents were rejected on the ground that they were not genuine. The Tribunal was required to have recorded definite finding whether these documents were genuine or not and thereafter adjudicated the matter....."*

Reference has further been made to a case of ***Punjab Wool Syndicate v State of Punjab and anr, 2023 28 PHT 27(P&H)***.The operative part of the judgment reads as under:-

> *"...It is not the case of the respondents that on 13.07.2006, the appellant did not produce above said invoices. In one of the cases as referred above, even non-appearance before the I.C.C. cannot be made a ground to initiate penalty proceedings if no attempt to evade tax is made out....."*

Learned State counsel has not been able to dispute the fact that Form VAT-49 (A-1 colly) has been issued to the appellant, which was declaration issued by the Rajasthan Government carrying the goods outside the state. Learned State counsel has also not been able to dispute the fact that application for amendment in RC was duly made to the Excise and Taxation Department by the consignee dealer in VAT Form-5, prescribed under Act 2005 (A-2). Learned State counsel has justified the impugned order on the ground that goods were being brought in Punjab and could be taken out of Punjab even without making declaration at any ICC and this amounts to violation of proviso of Section 51 (2) and Section 51 (4) of Act 2005. This was done to evade the tax only.

Heard learned counsel for the parties at length.

It is not in dispute that in the present case, Form 49 was duly issued by the Rajasthan Government to carry interstate Goods. Further there was no ICC which fell enroute. The place where the goods were to be unloaded were duly informed to the department, vide VAT Form 5. The godowns were taken on the lease by the consignee under lease agreement (A-3) and this information as to lease was provided to the concerned department, Abohar, Vide Form VAT-5 dated 13.08.2009 (A-2) I.e days prior to the movement of consignment from Rajasthan. Form VAT-5 was duly accepted by the department. It was also admitted that there were certain restrictions on stock in Rajasthan and therefore, the same were sold to consignee. In the impugned order as well, it has been observed that the goods were being brought into Punjab by M/s Mundawala Enterprises of Abohar and goods were meant for trade. Merely on the ground that the information with respect to goods carried in the vehicle has not been given before the Officer Incharge of the check post or ICC, the impugned order could not have been passed. This issue has already been considered by this Court in ***Shree Ram Panel's case (supra)***. In the present case, except for giving information to ICC, all other documents shows that the appellant was not attempting to evade tax.

In view of the above, the writ petition is allowed and order dated 01.11.2010 (A-7) is set aside.

**(RITU BAHRI)**
**JUDGE**

**11.04.2023** **(AMARJOT BHATTI)**
G Arora **JUDGE**

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