211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Revision No.11 of 2011 (O&M)
Date of Decision: 01.08.2024

STATE OF PUNJAB THROUGH EXCISE AND TAXATION COMMISSIONER, PUNJAB, CHANDIGARH AND ANOTHER

.........Petitioners

V/s.

M/S. VEE KAY OIL PVT. LTD., AHMEDGARH, DISTRICT SANGRUR

........Respondent

CORAM: ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Bhuvnesh Satija, DAG, Punjab
for the petitioner.

Mr. Sandeep Goyal, Advocate with
Mr. Rishab Singla, Mr. Mohit Bassi and
Mr. Sameesh Bassi, Advocates for the respondent-Assessee.

***

SANJEEV PRAKASH SHARMA, J. (Oral)

(1) Heard learned counsel for the both the parties at length.

(2) Learned counsel for the petitioner/State has vehemently argued that since the Registration Certificate of the concerned three Dealers of Delhi stood cancelled under Section 65 of the Delhi Sales Tax, 1975 (for short “the Act”), the transactions stated to have been conducted between the respondent/Assessee and the three Dealers at Delhi, who are stated to have missing the consignment sales, will be deemed to be fraudulent, and actually it is a case where the respondent/Assessee has sold the goods to someone else and has mentioned the name of the Dealers whose registration stood already cancelled.

(3) Learned counsel for the appellant/State submits that the Value Added Tax Tribunal, Punjab (for short “the Tribunal”) has failed to take notice of aforesaid aspects and has wrongfully allowed the Revision vide its order dated 24.12.2010. Learned counsel further submits that the issue with regard to publication of the cancellation order has no relevance to the present case where it has to be presumed that the respondent/Assessee has wrongly taken benefit of consignment of goods to Delhi Dealers once it has come to the knowledge of the Authorities at Delhi that registrations of all the three firms stood cancelled. Therefore, there has been no transaction which can be said to be recognized by the Department.

(4) Learned counsel for the State/petitioner submits that the consignment sales affected by the respondent-Assessee are fraudulent in nature and with the purpose to deprive the Revenue of the amount of tax.

(5) Upon the questions of law framed, learned counsel for the petitioner/State submits that as far as questions of law as framed by this Court on 04.03.2017 is concerned, the cancellation of Registration Certificate has no relation to the publication of the Registration Certificates which have been cancelled. He has invited the attention of this Court to the provisions of Section 65 of the Act to submit that the Rule wholly requires that after the cancellation has already been done, the Commissioner shall, at intervals not exceeding three months, publish in the Official Gazette, such particulars as may be prescribed of the dealers whose certificates of registration are cancelled under the provisions of this Act. Thus, the same clearly reflects that it would not be a pre-requisite.

(6) Learned counsel for the petitioner/State has further argued on question No.(ii) to submit that the consignment sales sent to Delhi by the respondent-Assessee, have not been proved nor any document has been shown which can sufficiently reflect the actual sale having been conducted and the goods having been transferred to the Delhi Dealers.

(7) Learned counsel for the petitioner/State has also argued that the transactions stated to have been made by the respondent/Assessee are not genuine, and it has been done to avoid the tax which is required to be paid to the Revenue that the respondent-Assessee has taken a plea of consignments sales to Delhi Dealers.

(8) *Per contra*, learned counsel appearing for the respondent-Assessee submits that the questions of fact stood finally adjudicated by the Tribunal which need not be interfered by this Court in the present Revision. Learned counsel for the respondent-Assessee submits that the record had been produced before the Assessing Officer, but the same, in spite of being demanded was not produced by the State authorities before the Tribunal. The revisional authority, namely; the Tribunal has noticed that the appellant had produced agreements executed with the consignees, affidavits of the consingees, Bikri statements, extracts of the ledger account maintained in the books of consignee duly singed and the consignment notes sent to the consignees. It also noticed that the accounts had shown the sales affected by the parties and the payment was received through Banks. In the circumstances, learned counsel submits that there is no occasion to presume that the sales were fraudulent and merely because the Delhi authorities had cancelled the Registration of the Delhi firms, a presumption cannot be drawn as against the respondent/Assessee of not having conducted the business and sent the consignment to them. It is his submission that none of the parties were produced during the enquiry nor any of the statements were recorded. Merely on the basis of report of the Officer, the impugned order and a demand had been raised which has been rightly set aside in revision by the Tribunal vide the impugned order.

(9) We have considered the respective arguments and carefully gone through the orders passed by the Assessing Officer as well as by the Revisional Authority.

(10) This case has a checkered history. On 14.05.2002, the assessing authority passed an order in favour of assessee which was *suo moto* taken up by the Revisional Authority who vide its order dated 21.09.2004, has passed order creating an additional demand of ₹2,22,80,000/-. The respondent/Assessee challenged the order in revision before the VAT Tribunal who vide order dated 21.10.2005 dismissed the revision petition of the Assessee. The respondent/Assessee filed an application under Section 22 of the Punjab General Sales Tax, 1948 before the VAT Tribunal, Punjab for rectification which was decided on 16.11.2006. Second rectification application was preferred by the respondent/Assessee which was also dismissed by the VAT Tribunal, Punjab on 11.04.2008. The application for framing certain questions of law was also dismissed by the VAT Tribunal, Punjab on 14.08.2008. The respondent/Assessee approached this High Court by way of CWP-17029-2008 which was decided on 03.10.2008 re-opening the revision. The revision case of the respondent/Assessee was again examined by the revisional authority under Section 21(1) of the Punjab General Sales Tax Act, 1948 on 17.03.2010 and the additional demand was confirmed. The respondent/Assessee thereafter again challenged the same and vide order dated 02.06.2010, the Tribunal passed an order in favour of the respondent/Assessee vide order dated 24.12.2010. The State has, thereafter, challenged the same by way of the present Revision before this Court.

(11) This Court, while admitting the present Revision Petition, has framed the following questions of law for consideration vide order dated 04.03.2013:-

> *(i) Whether the publication of the cancellation of registration certificate in the Official Gazette is a prerequisite condition for cancellation of the registration certificate?*
>
> *(ii) Whether the consignment sales effected by the assessee after the cancellation of the registration certificate are fraudulent in nature?*
>
> *(iii) Whether the assessee has failed to satisfy the genuineness of the transactions before Assessing Authority in the absence of Form-F?*

(12) Having noticed above, we find that the question No.(i) was framed at instance of the learned counsel for the State/petitioner, but we find from the provisions of the Act and the Delhi Sales Tax Rules, 1975 framed therein, that for the purpose of cancellation of the Registration as provided under Rule 19, there is no pre-requisite condition that the same should be published before cancellation.

(13) The question, which this Court intended to frame, appears to be *"as to whether the cancellation of the Registration Certificate would come into force only after the same is published in the official Gazette"*.

(14) For the said purpose, we would quote the provisions of the Section 65 of the Act as well as Rules 19 and 20 of the Delhi Sales Tax Rules, 1975 which read as under:-

"Section 65 of the Delhi Sales Tax Act, 1975

Publication of names, etc. of dealers whose certificates of registration are cancelled.

The Commissioner shall, at intervals not exceeding three months, publish in the Official Gazette such particulars as may be prescribed of dealers whose certificates of registration are cancelled under the provisions of this Act.

Rule 19 of the Delhi Sales Tax Rules, 1975

Procedure for Cancellation of Certificate of Registration

1. *"The further period referred to in sub-section (3) of section 3 shall be one year.*
2. *The dealer shall surrender his certificate of registration to the appropriate assessing authority within thirty days after the expiry of the period laid down in sub-rule (1).*
3. *If any dealer registered under section 15, wishes to apply for cancellation under sub-section (2) of section 20, he shall make an application in this behalf to the appropriate assessing authority not less than three months before the end of the year together with –*
    - i. *a statement for the preceding two years showing separately (a) the turnover of the dealer taxable under the Act, (b) the turnover of sale in the course of inter-State trade or commerce, and (c) sale in the course of export outside the territory of India;*
    - ii. *a statement showing the value of goods manufactured by him during the preceding two years;*

iii. a declaration in the form of an affidavit on a non-judicial stamp paper of the appropriate value whether or not he -

a. manufactures any goods for sale;

b. imports any goods for sale or for use in manufacturing of any goods for sale;

c. makes any sale in the course of export outside the territory of India.

4. A certificate of registration issued to a dealer who is registered under the Bengal Finance (Sales Tax) Act, 1941 as in force in Delhi, immediately before the date notified under sub-section (3) of section 1 and who is not liable to pay tax under the Act shall be surrendered by him within a period of fifteen days of the date on which the Act comes into force and the appropriate assessing authority shall cancel the certificate of registration in accordance with the provisions of section 20 :

PROVIDED that the appropriate assessing authority shall on his own motion proceed to pass an order cancelling the certificate of such dealer after the expiry of the aforesaid period, without prejudice to any other action being taken against him.

Rule 20 of the Delhi Sales Tax Rules, 1975

Publication of particulars cancelled certificates of registration

The Commissioner or any other officer authorized by him in this behalf shall, at intervals not exceeding three months, publish a list containing the particulars of all the certificates of registration cancelled during that interval in the following form:

Sr. No.	Name and address of the dealer	Name of the Prop./Manager/ Partner/Director	No. and date of Certificate of registration	Description of goods covered by the cancelled certificate of registration			Date of cancellation
				(a) For resale	(b) For manufacture	(c) For packing	
(1)	(2)	(3)	(4)	(5)			(6)”

(15) From the perusal of the aforesaid, it is apparent that the cancellation of the Registration Certificate does not require to be published for the purpose of its enforcement. The publication is of the particulars of the concerned prescribed dealers whose certificate have been cancelled, and that apparently for the purpose of informing one and all about their present status so that there may not be any fraudulent transactions. Same is the purpose of Rule 20 of the Delhi Sales Tax Rules, 1975 which mentions about various statics. Thus, publication of names of dealers whose registration is cancelled is necessary.

(16) In view of the above, we answer question No.1 in favour of the respondent-Assessee and find that while the Registration of the dealers might have been cancelled, the same were never published and therefore, the respondent-Assessee, who is from the State of Punjab, would have no information about the Dealers, about their registration having been already cancelled by the Delhi authorities. Any transactions done by the Assessee with such dealers cannot be presumed to be fraudulent and against the respondent-Assessee, if he produces documents of having transported the goods and received consideration for them which are not found to be forged.

(17) So far as the question No.(ii) and (iii) are concerned, we find that the same are essentially factual in nature. Generally speaking, if the registration certificate has been cancelled, any sales which may be conducted or the consignment sales conducted with such dealers, whose registration certificate stands cancelled, would have an effect of nullity in the eyes of law and no benefit can be granted thereto. However, reasonable plea can always be taken by the concerned consigner that he had no knowledge of the concerned dealers that the registration having been cancelled as the same was not published. In the present case, on factual count, we find that the Tribunal has concluded that the sales were genuine. We find that the assessee had produced agreements executed with the consignees, affidavits of the consingees, Bikri statements, extracts of the ledger account maintained in the books of consignee duly singed and the consignment notes sent to the consignees, which were not found to be forged. For declaring any transaction as fraudulent, essentially, element of forgery is required to be alleged and proved, but the revenue has neither alleged nor proved even *prima facie* of their being any forgery on part of the assessee. Thus, there is no perversity in the order. The questions No.(ii) and (iii) are accordingly answered in favour of the Assessee.

(18) In view of the above, the VAT Revision fails and is accordingly ***dismissed***.

(19) All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

August 1, 2024
Ess Kay

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