



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

VATAP No.84 of 2010 (O&M)

Reserved on: 07.01.2025

Pronounced on: January 28, 2025

Shree Shiva Steels

.....Appellant

Vs.

The State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

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

Mr. Saurabh Kapoor, Additional Advocate General, Punjab.

SUDEEPTI SHARMA J.

The present appeal under Section 68(2) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') is preferred against the order dated 30.07.2010 passed by Ld. VAT Tribunal, Punjab, whereby the penalty order dated 27.08.2009 passed by Assistant Excise and Commissioner (Mobile Wing), Bathinda to the tune of Rs.2,12,310/- under Section 51(7) (c) of the Punjab VAT Act, 2005, is upheld.

2. The following questions of law have been claimed in the present appeal:-

(i) Whether on facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty imposed by AETC?

(ii) Whether the appellant could have attempted to evade the tax under the Punjab VAT Act by not submitting the bills at



ICC despite the fact that the details of bills are duly mentioned in the Statutory Form of Rajasthan (VAT 47) and was produced at the time of generation of information for other transactions?

(iii) Whether the ETO (Mobile Wing) has the jurisdiction to check and detain the vehicles at the ICC premises itself even though officers of ICC have the jurisdiction to do so within their premises?

(iv) Whether on the facts and circumstances of the case, the ETO (Mobile Wing) can check and detain the vehicles, when the vehicles were at ICC premises and ICC staff could have corrected the information if there were any defects in the documents?

3. Brief facts of the case as narrated in the appeal are that on 19.08.2009, the goods i.e. Iron Goods being transported in the vehicles No. RG-13G-4274 & RJ-13G-8182 were detained by the Excise and Taxation Officer (MW), Bathinda for verification on the grounds that the goods in transit were in excess by weight as detected after weighment and requisite information in respect of the excess goods was not furnished at any Information Collection Centre (for short 'ICC'). The documents accompanying the goods were GRs No. 1434 and 1435 dated 19.08.2009. Trip Sheet of Punjab Goods Transport Company, Mandi Gobindgarh and three VAT XXXVI forms, Invoices No. 1287 and 2448 and 2456 dated 19.08.2009 for Rs. 32,798/-, Rs. 33,130/-, Rs. 89,025/- and Rs. 73,400/-, respectively and four forms VAT XXXVI and Forms VAT 47. Statements of the drivers were recorded and a notice was issued to the owner of the goods.

4. Sh. Neeraj Kumar stated to be Manager of the firm M/s Shree Shiva Steels, Mandi Gobindgarh, appeared before the Detaining Officer and

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claimed ownership of the goods loaded excess in both the vehicles. He was confronted with the facts of the case. He produced FR No. 980 and 981 alongwith retail invoices 39 and 40 dated 19.08.2009 issued by M/s Shree Shiva Steels, Mandi Gobindgarh for Rs. 1,58,781/- and Rs. 2,65,481/- in favour of M/s Raghav Trading Company, Sri Ganganagar. He explained that the goods which were detected in excess were covered by these documents which were given to the drivers but the TIN of the consignor firm was blocked so the driver could not generate the information in respect of these goods. He did not produce any account books. He furnished cash security of Rs. 53,100/- and bank guarantee for Rs. 1,59,253/- and requested for release of the goods, the goods were accordingly released. The Detaining Officer observed that the excess goods worth Rs. 4,24,622/- were being transported without documents and requisite information was knowingly not furnished to any ICC. The case was forwarded to the AETC (MW), Bathinda, for imposing penalty u/s 51(7)(c) of the Act.

5. After inquiry, the AETC (MW), Bathinda, imposed a penalty of Rs. 2,12,310/-, u/s 51 (7) (c) of the Punjab VAT Act, 2005, vide his order dated 27.08.2009.

6. Aggrieved by the order of the AETC (MW), Bathinda, the appellant preferred an appeal before the DETC(A), Faridkot Division, HQ, Bathinda, who dismissed the appeal, vide his order dated 19.11.2009.

7. Aggrieved by the order of the DETC (A), Faridkot Division, HQ Bathinda, the appellant preferred an appeal before VAT Tribunal, Punjab, Chandigarh who vide order dated 30.07.2010 dismissed the appeal. Hence, the present appeal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES**

8. Learned counsel for the appellant contends that the penalty under Section 51(7) (C) of the Punjab VAT Act, 2005 could not be imposed since there was no intention to evade any tax. She has relied upon the judgment passed by this Court in VAT Appeal No.36 of 2012 decided on 26.09.2012, titled as ***State of Punjab and another Vs. M/s Desai Brothers Limited.***

9. Per contra, learned State counsel contends that the appeal filed by the appellant has rightly been dismissed by Ld. VAT Tribunal, Punjab vide its order dated 30.07.2010, since the appellant was not carrying bill and GR of the excess goods at the time of their detention.

10. We have heard the learned counsel for the parties and perused the whole record of this case.

11. Before preceding, it would be necessary to reproduce the relevant portion of Section 51 of the Punjab Value Added Tax Act, 2005, which is reproduced as under:-

“51. Establishment of information collection centres or check posts and inspection of goods in transit.

“(1) If, with a view to prevent or check avoidance or evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification, direct for the establishment of a check post or, information collection centre or both at such place or places (or in such manner), as may be specified in the notification.

(2) The owner or person Incharge of (the goods) a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle (or by any other means) and produce a copy each of the aforesaid documents to an officer Incharge of a check post or information collection



centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place:

Provided that a person selling goods from within or outside the State in the course of (intrastate or) inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:

Provided further that a taxable person, who sells or despatches any goods from within the State to a place outside the State or imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly filled in and signed.

(3) At every check post or information collection centre or at any other place when so required by an officer referred to in sub-section (2), the driver or any other person Incharge of the goods (and goods))vehicle shall stop the vehicle and keep it stationary, as long as may reasonably be necessary, and allow the officer Incharge of the check post or the information collection centre or the aforesaid officer to check the contents in the vehicle by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried, which are in the possession of the driver or any other person, as may be required by the aforesaid officer, and if considered necessary, such officer may also search the goods vehicle and the driver or other person Incharge of the vehicle or of the goods.

(4) The owner or person Incharge of a goods (the goods and) vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check post or information collection centre, as the case may be, and shall furnish in triplicate a declaration mentioned in sub-section (2) alongwith the documents in respect of the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer Incharge shall return a copy of the declaration duly verified by him to the owner or person Incharge of (the goods and) the goods vehicle to enable him to produce the same at the time of subsequent checking, if any:

Provided that where a goods vehicle bound for any place outside the State passes through the State, the owner or person Incharge of such vehicle shall furnish, in duplicate, to the officer Incharge of the check post or information



collection centre, a declaration in respect of his entry into the State in the prescribed form and obtain from him a copy thereof duly verified. The owner or person Incharge of the goods vehicle, shall deliver within forty-eight hours the aforesaid copy to the officer Incharge of the check post or information collection centre at the point of its exit from the State, failing which, he shall be liable to pay a penalty to be imposed by an order, made by the officer incharge of the check post or information collection centre equal to fifty per cent of the value of the goods involved:

Provided further that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State, shall lie on the owner or person Incharge of the vehicle:

Provided further that no penalty shall be imposed unless the person concerned has been given an opportunity of being heard.

(5) At every station of transport of goods, bus stand or place of loading or unloading of goods, when so required by the Commissioner or the designated officer, the driver or the owner of (the goods, and) the goods vehicle or the employee of transport company or goods booking agency, shall produce for examination, transport receipts and all other documents and accounts books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport, maintained by him in the prescribed manner. The Commissioner or the designated officer shall, for the purpose of examining that such transport receipts or other documents or account books are in respect of the goods carried, transported, loaded, unloaded or consigned or received for transport, have the powers to break open any package, or packages of such goods.

(6)(a) If the officer Incharge of the check post or information collection centre or any other officer as mentioned in sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be



recorded in writing and after hearing the person concerned, order detention of the goods alongwith the vehicle for a period not exceeding seventy-two hours. Such goods shall be released on furnishing of security or executing a bond with sureties in the prescribed form and manner by the consignor or the consignee, if registered under this Act to the satisfaction of the officer on duty and in case the consignor or the consignee is not registered under this Act, then on furnishing of a security in the form of cash or bank guarantee or crossed bank draft, which shall be equal to the amount of penalty leviabale rounded up-to the nearest hundred.

(b) If the owner or the person Incharge of the goods has not submitted the documents as mentioned in sub-sections (2) and (4) at the nearest check post or information collection centre, in the State, as the case may be, on his entry into or before exit from the State, such goods shall be detained alongwith the vehicle for a period not exceeding seventy-two hours subject to orders under clause (c) of sub-section (7).

NOTE: *(1) "Person in-charge of the goods" shall include carrier of goods or agent of a transport company or booking agency or any other bailee for transportation and in-charge or owner of a bonded warehouse or of any other warehouse.*

(2) "information collection centre" shall include Virtual information collection centre.

(7)(a) *The officer detaining the goods under sub-section (6), shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person Incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within the period of seventy-two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alongwith the concerned records to the designated officer for conducting necessary enquiry in the matter;*

(b) *The designated officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or*



evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty per cent of the value of the goods. In case he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings;

(c) The officer referred to in clause (b), before conducting the enquiry, shall serve a notice on the consignor or consignee of the goods detained under clause (b) of sub-section (6) and give him an opportunity of being heard and if, after the enquiry, such officer is satisfied that the documents as required under subsections (2) and (4), were not furnished at the information collection centre or the check post, as the case may be, with a view to attempt to avoid or evade the tax due or likely to be due under this Act, he shall by order, for reasons to be recorded in writing, impose on the consignor or consignee of the goods, penalty equal to fifty per cent of the value of the goods involved. In case, he finds otherwise, he shall order release of the goods for sufficient reasons to be recorded in writing. He may, however, order release of the goods and the vehicle on furnishing of a security by the consignor or the consignee in the form of cash or bank guarantee or crossed bank draft for an amount equal to the amount of penalty imposable and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings; and

(d) The officer Incharge of a check post or information collection centre or any other officer referred to in sub-section (2), may receive the amount of cash security as referred to in clause (a) of sub-section (6) and clause (c) of sub-section (7) and the amount of penalty imposed under sub-section (4) and clauses (b) and (c) of sub-section (7) against a proper receipt in the prescribed manner.

Explanation. - *The detained goods and the vehicle shall continue to be so detained beyond the period specified in sub-sections (6) and (7), unless released by the detaining officer or enquiry officer against surety or security as provided for in these sub-sections or the penalty imposed, has been realized or the enquiry officer orders release of the detained goods after enquiry, whichever is earlier. ”*



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12. A perusal of the above shows that the object and reasoning behind the establishment of check post or Information Collection Centre or both was to prevent or check avoidance or evasion of tax. Therefore, it is the requirement under Section 51(2) of the Act that the owner or person Incharge of the goods or a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle or by any other means and produce a copy of each of the aforesaid documents before an officer incharge of check post.

13. Further, as per Section 51(4), it is mandatory requirement that the owner or person Incharge of the goods and a goods vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check post or information collection centre, as the case may be, and shall furnish in triplicate a declaration mentioned in sub-section (2) alongwith the documents in respect of the goods carried in such vehicle before the officer Incharge of the check post or information collection centre.

14. In view of the above mandatory provisions, now we come to the facts of the present case. The undisputed fact is that the goods i.e. iron goods being transported in two vehicles were detained by the Excise and Taxation Officer (MW), Bathinda for verification on the grounds that the goods in transit were in excess by weight as was detected after weighment, and requisite information in respect of excess goods was not furnished at any ICC. After issuance of show cause notice, Shri Neeraj Kumar Manager of the firm M/s Shree Shiva Steels, Mandi Gobindgarh, appeared before the Detaining Officer

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who claimed himself to be the owner of the excess goods loaded in both the vehicles. He was confronted with the facts of the case. He produced FR No. 980 and 981 alongwith retail invoices 39 and 40 dated 19.08.2009 issued by M/s Shree Shiva Steels, Mandi Gobindgarh for Rs. 1,58,781/- and Rs. 2,65,481/- in favour of M/s Raghav Trading Company, Sri Ganganagar. He explained that the goods in excess were covered by aforementioned documents and were given to the driver but since the TIN of the consignor firm was blocked, therefore, the driver could not generate the information in respect of the excess goods. He did not produce any account books in support of his explanation. The production of documents by Sh. Neeraj Kumar, Manager of the firm-M/s Shree Shiva Steels, Mandi Gobindgarh after issuance of show cause notice is an afterthought.

15. A perusal of the record further shows that the drivers of both the trucks did not produce any document in respect of excess goods and categorically stated that they have no other document relating to the goods in question. The explanation given by owner of the goods that since the TIN of the consignor firm was blocked, therefore, the drivers could not generate the information in respect of excess goods, cannot be believed since perusal of the record shows that GR No.980 and 981 alongwith retail invoices No.39 and 40 dated 19.08.2009 were produced by Sh. Neeraj Kumar stated to be Manager of the appellant-firm, after the show cause notice was issued to the owner of the goods. Further these documents should have been with the drivers at the time of furnishing information at ICC as per the requirement of Section 51(2) of the Act as referred to above. This proves the intention of the appellant to evade tax.

16. So far as the judgment relied upon by the learned counsel for the appellant is concerned, the facts of the same are distinguishable, since in that



case the entries were made in Form ELTA-12 as well as declaration in Form 85 and the driver inadvertently left the invoices relating to the goods in dispute due to over-sight and on being asked by the officer on duty, he went back and picked up the remaining documents and produced the same before the officer Incharge, whereas, in the present case, both the drivers were not carrying the requisite documents as per the requirement of the provisions of Section 51 of the Punjab Value Added Tax Act, 2005

17. A perusal of the record shows that the Ld. AETC (MW) Bathinda after conducting proper inquiry and after giving full opportunity of being heard to the appellant, has passed the penalty order under Section 51(7) (c) of the Act.

18. In view of the above, we do not find any infirmity in the order dated 30.07.2010 passed by the Ld. VAT Tribunal, Punjab, Chandigarh, the same is upheld. No question of law much less substantial question of law arises in the present appeal. Accordingly, the same is ***dismissed***.

19. All the pending applications also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 28, 2025
sonia arora

Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No