

BEFORE JUSTICE A.N, JINDAL, VALUE ADDED TAX
TRIBUNAL, PUNJAB, CHANDIGARH

Appeal No.146 of 2014
Decided on 27-4-2015



M/S Welspun Projects Ltd,
Jalandhar

Versus State of Punjab

Present: Mr. Amit Bajaj, Advocate counsel for the appellant.
Mr. N.D.S Mann, Addl. Advocate General for the State.

The Excise and Taxation Officer-cum-Designated Officer ICC Dhabi Gujran, District Patiala vide order dated 25-11-2010 imposed a penalty of Rs. 1,12,172/- u/s 51(7)(b) of the PVAT Act, 2005. The appeal filed by the appellant was dismissed on 28-11-2013.

On 9-11-2010, a driver along with vehicle bearing registered number HR- 56- 9402 while carrying parts of the structural steel from Hinjewadi Pune to Village Phulokheri Talwandi Sabo, reached ICC Dhabi Gujran, the driver produced the following documents before the Excise and Taxation Inspector:-

3. Invoice No. 2966 dated 31-10-2010 of M/S Tata Blue Scope Steel Ltd. Hinjewadi Taluki Mulshi Pune issued in favour of M/S M.S.K. Products (India) Jalandhar Ltd for Rs. 3,73,905/-.
4. Consignment Note No. 3244 dated 31-10-2010 of M/S Apogee Logistics (India) (PVT) Ltd. Pune

On scrutiny of the documents, the checking officer came to know that the goods were to be unloaded at Talwandi Sabo District Bhatinda whereas the firm was registered at Jalandhar. Suspecting that the goods were not accompanying the genuine documents imposed a penalty of Rs. 1,12,172/- on the

Copy Agent
VAT Tribunal, Punjab.

following grounds:-

1. The consignment was in favour of M/s M.S.K.projects (India) limited but on inquiry it was found that the said firm was not functioning at the given address.
2. The appellant had not provided any account books and other documentary proof to prove the genuineness of the covering documents.

Counsel for the appellant has argued that the appellant had not concealed anything . He is a dealer and imports the goods from outside the State of Punjab and pays the advance tax. The driver had not left the ICC without depositing the entry tax. The vehicle was detained on 9-11-2010 and he had deposited his tax on his return on 10-11-2010. He had not left the ICC before paying the tax. He has further argued that it is not a case of search and seizure. An examination of returns/VAT 20 of the appellant reveals that all the entries regarding consignment are clearly shown. There is no way in which attempt to keep the transaction out of account books could be made. The appellant had no intention to evade tax. He has further argued that the order passed by the authorities are non speaking and unreasoned.

To the contrary the state counsel has countered the arguments while saying that penalty order is quite valid.

Having perused the order passed by the Detaining Officer, it appears that the same is ex-parte having been passed only after issuing one day notice that too on the driver of the vehicle. No notice was served upon the appellant. The case was transferred to the Designated Officer on 12-11-2011. Notice was issued by the designated officer for 16-11-2011 and thereafter for 25-11-2011. Notice is stated to have been received by Bhiku Bhai an employee of the firm. But there is no evidence if the appellant/ or his employee actually received the notice

Though it is stated in the order that on enquiry, it was found that the appellant had no business premises at the given address. No enquiry report regarding the functioning the firm has been produced before me. In the absence of such enquiry report, it can not be said that appellant was not functioning and has

no TIN number. Thus it appears that the Designated Officer did not properly serve notice and provided reasonable opportunity to the appellant before imposing an order of penalty. The order of penalty appears to have been passed without application of mind.

Resultantly this appeal is accepted impugned orders are set aside and the case is remitted back to the Designated Officer with a direction that he would pass a speaking order after hearing the appellant. The appellant is directed to appear before the Designated officer on 7-7-2015. The officer would decide the case within 3 months from the date of receipt of the order.

Chandigarh dated the:
27 April, 2015


(Justice A.N. Jindal)
Chairman, VAT Tribunal, Punjab

Note: Whether fit for Reporting Yes

MB

Attested to be true copy.
Aravind 28.5.15
Supdt. (Judicial)
Value Added Tax Tribunal
Punjab, Chandigarh.
Indian Evidence Act 1872
Under Section 76
28/5/15



101 VAT / VRI / 2015 / 3948

Chd dt 29-5-15

To *M/s Welspun Projects Ltd. Jal*

Sh. Amit Bajaj Advocate

*E-J-124 Back Side of Raj mahal Hotel
Milap Chowk Jalandhar*