(2014) 09 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 12331 of 2014

A One Ceramic — APPELLANT

Vs

State of Gujarat — RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Value Added Tax Act, 2003 — Section 68, 68(5), 69, 73(1)

Citation : (2014) 76 VST 347

Hon'ble Judges : Sonia Gokani, J;Harsha Devani, J

Bench : Division Bench

Advocate : B.D. Karia and Bhargav Karia and Asso, Advocate for the Appellant; Chintan Gandhi, Assistant Government Pleader, Advocate for the Respondent

Judgement

Harsha Devani, J.—Rule. Mr. Chintan Dave, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents. Having regard to the controversy involved in the present case which lies in a very narrow compass and with the consent of the learned counsel for the respective parties, the matter was taken up for final hearing today.

2. By this petition under article 226 of the Constitution of India, the petitioner has challenged the order dated August 26, 2014 passed by the fifth respondent whereby the respondent, in exercise of powers under sub-section (5) of section 68 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the VAT Act"), has directed seizure of the goods of the petitioner and assessed tax at Rs. 1,65,240 and imposed penalty at 150 per cent thereof at Rs. 2,47,860, and directed the petitioner to pay in all Rs. 4,13,100. Moreover, the petitioner has also been directed to pay Rs. 12,880 towards input tax.

3. The facts giving rise to the present petition are that the petitioner is engaged in the business of trading in ceramic tools, ceramic tiles, sanitary wares, etc., and is registered under the VAT Act. Pursuant to a purchase order dated August 4, 2014 from Arvind Ceramic Private Limited, Chennai, for supply of 3,000 boxes of

ceramic tiles at the rate of Rs. 120 per box, on August 11, 2014, the petitioner sent such goods through SBMS Transport for carrying 3,000 boxes of ceramic tiles from Morbi to Chennai in a truck bearing No. AP-04-TU-1166. It is the case of the petitioner that at the relevant time when the goods were dispatched, the computer system was not working and the petitioner was unable to take a printout of form No. 402 online. The petitioner, therefore, sent the goods with a manual form No. 402. It appears that the truck carrying the goods dispatched by the petitioner was detained by the respondent Nos. 4 and 5, and a memo dated August 12, 2014 bearing No. 128 came to be issued to the driver, on the ground that the goods were not accompanied by a form No. 402. The petitioner thereafter addressed a letter dated August 12, 2014 along with a form No. 402 with details of the goods being transported from Morbi to Chennai, with a request to release the truck and the goods. No action was taken thereon, hence, the petitioner addressed another letter dated August 15, 2014 to the fifth respondent in connection with a phone call received by the petitioner from the office of the fifth respondent to pay a sum of Rs. 4,25,600 for release of the goods and the truck. The petitioner thereafter by a letter dated August 19, 2014, once again requested the fifth respondent to release the truck and the goods stating that the petitioner was ready and willing to pay the legitimate tax and interest thereon as and when the same is assessed by the fifth respondent. Another letter dated August 20, 2014 came to be addressed by the petitioner to the respondents to release the truck and the goods on the ground that the respondents have no right or authority to detain the truck and the goods of the petitioner under the provisions of sections 68 and 69 of the VAT Act. By the impugned order dated August 26, 2014 passed by the fifth respondent under section 68(5) of the VAT Act, the petitioner was directed to deposit Rs. 4,13,000, including the tax amounting to Rs. 1,65,240 levied at the rate of 15 per cent, after considering the value of goods at three times the actual value and penalty at 150 per cent, amounting to Rs. 2,47,860. The petitioner was also ordered to deposit Rs. 12,880 towards input-tax credit. It is in the backdrop of the aforesaid facts, that the petitioner has approached this court challenging the impugned order and seeking a direction to the respondents to release the truck bearing No. AP-04-TU-1166 along with the goods, on suitable terms and conditions.

4. Mr. B.D. Karia, learned Advocate for the petitioner, invited the attention of the court to the provisions of sub-section (5) of section 68 of the VAT Act, to submit that the impugned order has been passed without affording a reasonable opportunity of hearing to the petitioner. It was submitted that under the provisions of sub-section (5) of section 68 of the VAT Act, the officer-in-charge can at best impose penalty in addition to the tax payable under the Act, not exceeding one and one-half times of the tax for possession of goods so seized. Adverting to the facts of the present case, it was submitted the goods in question are valued at Rs. 3,60,000 and hence, the tax payable thereon would come to Rs. 54,000 and the highest penalty that could be imposed would be Rs. 1,08,000. It was submitted that however, the fifth respondent, apart from the

fact that the principles of natural justice have not been complied with while passing the impugned order, has assessed the tax payable at an exorbitant amount de hors the provisions of sub-section (5) of section 68 of the VAT Act.

5. On the other hand, Mr. Chintan Gandhi, learned Assistant Government Pleader, vehemently opposed the petition, by reiterating the averments made in the affidavit-in-reply filed on behalf of the fifth respondent. It was submitted that the conduct of the petitioner is required to be seen, inasmuch as, the truck in question was detained at Sagbara and not at Songadh check-post; as soon as the truck was stopped, the driver of the truck had fled from the scene and had returned after an hour and submitted a manual form No. 402. It was further submitted that against the impugned order, the petitioner has an alternative remedy available by way of an appeal under section 73(1) of the VAT Act and as such, there is no warrant for intervention by this court in exercise of powers under article 226 of the Constitution of India.

6. This court has considered the submissions advanced by the learned counsel for the respective parties and has also perused the record of the case as available before the court.

7. From the facts noted hereinabove, it is apparent that the goods of the petitioner have been detained along with the truck by the fifth respondent. Thereafter, the fifth respondent, by the impugned order, has assessed the tax payable on the goods in question at Rs. 1,65,240 and has imposed penalty at 150 per cent, of the said amount being Rs. 2,47,860. In this regard, a perusal of the provisions of sub-section (5) of section 68 of the VAT Act reveals that the officer-in-charge of the check-post or barrier may, after giving the owner, driver or person-in-charge of goods, a reasonable opportunity of being heard and after holding such further inquiry, as he deems fit, impose on him penalty, in addition to tax payable under the Act, not exceeding one and one-half times of the tax for possession of goods so seized. Reverting to the facts of the present case, it is not in dispute that the value of the goods in question is Rs. 3,60,000. If the goods are sought to be sent outside the State of Gujarat, the tax payable would be at two per cent, which would come to Rs. 7,200. However, even if the goods are meant for sale within the State of Gujarat, the highest amount of tax that could be leviable would be at the rate of 15 per cent, which would come to Rs. 54,000. Therefore, the maximum tax that could have been recovered by the respondents in respect of the goods in question would be to the tune of Rs. 54,000, whereas in the facts of the present case, the fifth respondent has assessed the tax at Rs. 1,65,240. Moreover, the penalty, at best, could be one and one-half times the amount of tax, whereas having regard to the fact that the tax itself has been assessed at more than three times the normal rate, the penalty at 150 per cent, of that amount, is also equally exorbitant.

8. Furthermore, from the facts which have come on record, it is apparent that the petitioner has not been afforded an opportunity of hearing by the respondents. Clause (a) of sub-section (5) of section 68 of the VAT Act clearly

contemplates affording reasonable opportunity of being heard to the owner, driver or person-in-charge of the goods. Under the circumstances, the impugned order clearly suffers from the vice of being in breach of the principles of natural justice and as such, cannot be sustained on this ground alone.

9. On a query raised by the court, the learned Assistant Government Pleader has submitted that insofar as the regular assessment of the petitioner is concerned, he is not a defaulter. Under the circumstances, the respondents do not have any reasonable ground to believe that the petitioner would not pay the tax which it is legally liable to pay.

10. Having regard to the overall facts of the case, the court is of the view that the petition deserves to be allowed, by setting aside the impugned order and directing the respondents to release the truck as well as the goods in question, subject to payment of a reasonable amount towards release thereof.

11. For the foregoing reasons, the petition succeeds and is, accordingly, allowed to the following extent:

The impugned order dated August 26, 2014 passed by the fifth respondent is hereby quashed and set aside. The respondents are directed to forthwith release the truck bearing No. AP-04-TU-1166 of the petitioner along with the goods, subject to the petitioner depositing an amount of Rs. 54,000 (rupees fifty four thousand only) with the respondent-authorities. It is clarified that quashing the impugned order shall not preclude the respondent authorities from passing a fresh order under section 68 of the VAT Act after affording a reasonable opportunity of hearing to the petitioner.

Rule is made absolute accordingly with no order as to costs.

