(2011) 12 RAJ CK 0083

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 96 of 2011

Assistant Commercial Taxes Officer APPELLANT

Vs

Dozco (India) Pvt. Ltd. RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 76(2)(b), 76(6), 84

Citation : (2013) 60 VST 292

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Amit Ratnawat, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—By this petition u/s 84 of the Rajasthan Value Added Tax Act, 2003 (hereinafter "the Act of 2003"), a challenge has been laid to the order dated July 21, 2010 passed by the Rajasthan Tax Board, Ajmer, upholding the order dated March 24, 2009, passed by the Deputy Commissioner (Appeals), Commercial Tax, Udaipur, whereby the Deputy Commissioner had set aside the order of the assessing authority passed on August 20, 2008 levying penalty u/s 76(6) of the Act of 2003 on the respondent-assessee. The facts of the case are that one vehicle bearing registration No. AP-31-TU-0770 was checked while in transit and it was found that the vehicle was carrying an excavator machine. On checking, it was found that while the "bilty" and invoice were with the driver of the vehicle the necessary declaration form VAT-49 was not accompanying the goods in transit which according to the assessing authority entailed violation of rule 5(1)(i) of the Rajasthan Value Added Tax Rules, 2006 (hereinafter "the Rules of 2006") and as such a notice was issued to the respondent-assessee as to why penalty u/s 76(6) of the Act of 2003 should not be imposed. The respondent-assessee submitted reply to the show-cause notice enclosing therewith form VAT-49. However, the reply in the defence of the respondent-assessee was negatived and the declaration in form VAT-49 over-looked and penalty u/s 76(6) of the Act of 2003 imposed amounting to Rs. 6,00,000. The assessing authority has negatived the defence of the respondent-assessee and overlooked the submission of form VAT-49 on the ground that the submission of form VAT-49 with the reply to the show-cause notice did not absolve the breach of statutory provision of the Act of 2003 whereunder the requisite documents were required to accompany the goods in transit.

2. The appellate authority as also the Rajasthan Tax Board have however held that in reply to the show-cause notice issued by the assessing authority the respondent-assessee had submitted a form VAT-49 bearing No. 0767228. It has been noted that apart from form VAT-49 which was submitted along with the reply to the show-cause notice, the goods in transit were accompanied by all requisite documents such as "bilty" and invoice, etc. In the overall facts of the case, the appellate authority came to a conclusion that on the principles as enunciated in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, , the submission of requisite declaration/form VAT-49 along with the reply to the show-cause notice, the declaration/form was sufficient compliance with the provisions of law as detailed in section 76(2)(b) of the Act of 2003 and that in such a fact-situation, the intent to evade the tax could not be established consequent to which no penalty could be levied. The Tax Board has also noted the fact that the equipment in issue was not for sale, but was only being sent for demonstration purposes and this fact was categorically recorded in a certificate which was accompanying the goods in transit. So holding, the Tax Board upheld the order of the appellate authority under the Act of 2003.

3. I have heard the counsel for the petitioner and perused the impugned order.

4. From the facts on record, it is evident that for one the declaration under form VAT-49 was not required in the course of goods in transit in view of the fact that admittedly the goods were not for sale and were being only for demonstration purposes. This fact was not negatived in any enquiry and the certificate in this regard accompanying the goods in transit not established to be false. Further even otherwise declaration in form VAT-49 was submitted to the assessing authority along with reply to the show-cause notice.

5. In this view of the matter, it is not conceivable that there was any intent to evade tax which could be made out against the respondent-assessee and consequently, the levy of penalty against the respondent-assessee was absolutely illegal, arbitrary and ultra virus of provisions of the Act of 2003. This conclusion finds support in the judgment of the honourable Supreme Court in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, . I therefore, find no force in this revision petition. The same is dismissed.

