(2011) 12 RAJ CK 0085

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 141 of 2011

Assistant Commercial Taxes Officer APPELLANT

Vs

Insecticides (India) Limited RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 76(2)(b), 76(6), 82

Citation : (2013) 60 VST 322

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Amit Ratnawat, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—A challenge has been laid in this revision petition to the order dated April 29, 2010 passed by the Rajasthan Tax Board, Ajmer upholding the order dated June 18, 2009 passed by the Deputy Commissioner (Appeals), Commercial Tax, Alwar, whereunder the Deputy Commissioner had set aside the order dated August 8, 2008, passed by the assessing authority levying penalty u/s 76(6) of the Rajasthan Value Added Tax Act, 2003 (hereinafter "the Act of 2003") on the respondent-assessee. The facts of the case are that the vehicle No. RJ-2G-6383 was checked at RIICO Industrial Area, Bhiwadi, and it was found that the goods in transit were consigned from Dehradun in the State of Uttranchal to Chaupanki in District Alwar, State of Rajasthan and the goods were accompanied by the requisite bills and challan. The assessing officer however found that goods were not accompanied by form VAT-47 which was a necessary document required to accompany the goods in transits entailing a violation of section 76(2)(b) of the Act of 2003 read with rule 53. In these circumstances, the assessing authority issued a notice to the respondent-assessee. The respondent-assessee submitted reply to the show-cause notice enclosing therewith form VAT-47. It was stated in the reply that the form was not sent in accompaniment of the goods in transit owing to the driver''s mistake. The assessing authority however dealt with reply of the respondent-assessee cursorily and merely in view of the fact that the aforesaid form was not found in accompaniment of the goods in transit at the time of checking proceeded to impose penalty u/s 76(6) of the Act of 2003 on the respondent-assessee. The assessing authority was of the view that the case set up by the respondent-assessee in reply to the show-cause notice was an after-thought in view of the fact that at the time of checking and taking of the statement of driver of vehicle in movement it had not been stated by the driver that the declaration form VAT-47 had been left back by him owing to an error.

2. The order dated August 8, 2008 passed by the assessing authority was challenged in appeal before the Deputy Commissioner (Appeals) u/s 82 of the Act of 2003 by the respondent-assessee whereupon vide order dated June 18, 2009, the appeal was allowed on the ground that in the overall facts of the case, the accompaniment of requisite documentation with the goods in transit indicated the authenticity and the submission of form VAT-47 along with the reply to the show-cause notice indicated the bona fide of the transaction and negatived the presence of any mens rea of evasion of tax to warrant imposition of penalty. The said order was put to challenge by the Revenue before the Rajasthan Tax Board. The Revenue''s appeal to the Tax Board also came to be dismissed vide order dated April 29, 2010.

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

4. On the facts on record, it is not in dispute that the documents along with the goods in transit were not found to be forged or unauthentic in the course of any inquiry by the assessing authority. Further the lacuna in the documentation as required u/s 76(2)(b) of the Act of 2003 was also fulfilled by the respondent-assessee on the issue of show-cause notice whereupon declaration in form VAT-47 was filed along with the reply. The honourable Supreme Court in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, , has held that where on issue of show-cause notice, the documents statutorily required if found short were to be filed along with the reply, it would be indicative of bona fides and compliant with law and would not warrant the levy of penalty. The facts of the present case are on all fours with the judgment of the honourable Supreme Court referred to above.

5. In this view of the matter, the Rajasthan Tax Board has committed no error in upholding the order dated June 18, 2009, passed by the Deputy Commissioner (Appeals). I therefore, find no force in this revision petition. The same is dismissed. Stay application is also dismissed.

