(2015) 01 RAJ CK 0140

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 175/2012 and Civil Misc. Stay Application No. 2587/2012

Assistant Commercial Taxes Officer — APPELLANT

Vs

K.S. Oils Ltd. — RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 76(2)(b), 76(6)

Citation : (2015) 82 VST 557

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of R.B. Mathur, for the Appellant

Judgement

Mohammad Rafiq, J.—This petition has been filed impugning the order dated 13.02.2012 passed by the Rajasthan Tax Board, Ajmer upholding the order dated 28.07.2007, passed by the Deputy Commissioner (Appeals), Jodhpur setting aside the levy of penalty on the respondent-assessee under Section 76(6) of the Rajasthan VAT Act, 2003 (hereinafter ''the Act of 2003'').

2. The facts of the case are that the vehicle of the respondent-assessee was checked by the Assistant Commercial Taxes Officer, Flying Squad, Bharatpur whereunder mustard solvent extract oil was being transported from Alwar (Rajasthan) to Morena (Madhya Pradesh). In the course of checking by the Sales Tax Department, it was found that the goods in transit were accompanied by all documents required under Section 76(2)(b) of the Act of 2003 such as goods receipt, bills, declaration in VAT 49 and also declaration form in ST 49 from Madhya Pradesh. The documents were thus complete. However, the petitioner-ACTO was of the opinion that the inter-state sale by the respondent-assessee from its Alwar office to its own branch in Morena was vitiated/illegal and on this count alone penalty under Section 76(6) of the Act of 2003 was levied.

3. The matter was considered by the Deputy Commissioner (Appeals) in appeal, who taking into consideration the fact that all the requisite documents were in

accompaniment of the goods in transit and that no inquiry was held to hold that there was any intent to evade the tax, set aside the order of penalty. More importantly, it was also noted that the goods in transit in the course of inter-state sale had also been visited by 2% tax as otherwise leviable on such sale. The Deputy Commissioner (Appeals) further found that in the event the inter-state sale was not valid, the said sale could be discarded by the Assistant Commercial Taxes Officer in the course of regular assessment of the respondent-assessee. So holding, the penalty under Section 76(6) of the Act of 2003 was set aside.

4. Further appeal by the petitioner-revenue to the Rajasthan Tax Board, Ajmer was dismissed primarily on the count that the goods in transit were duly dispatched and accompanied by all the requisite documents and thus not indicative any intent to evade tax. It was further held by the Tax Board that no inquiry was held by the assessing authority to conclude that the documentation by the respondent-assessee was deliberately conceived with an intent to evade the tax and that the penalty had been levied on mere suspicion.

5. I have considered the impugned order dated 13.02.2012 and am of the considered view that as the goods in transit were accompanied by all requisite documents under Section 76(2)(b) of the Act of 2003, the mere incident of the documents not being as the Assistant Commercial Taxes Officer, Flying Squad, Bharatpur thought they ought to have been, was not an occasion for levy of penalty. The question of nature of transaction is a matter to be considered in the regular assessment proceeding and where the nature of transaction was improper in law such transaction could have been discarded and requisite tax levied in regular assessment proceedings. Admittedly, the goods in transit were tax paid and even otherwise the respondent-assessee could have made the transfer of goods by way of stock transaction without paying any tax whatsoever. The ACTO, Flying Squad, Bharatpur could at best have referred the matter to the regular assessing authority but could not himself travel beyond his jurisdiction to pontificate on the issue of the irregularity of an interstate sale being made by the respondent-assessee''s Alwar office to its Morena office. This was beyond his jurisdiction. The overall context of the factual situation obtaining on the record of the case is indicative of a complete absence of any intent to evade the tax.

6. In this view of the matter, I find no occasion to interfere in the present sales tax revision and the same is, hereby dismissed.

7. Stay application is also dismissed.