(2008) 10 RAJ CK 0039

In the Rajasthan High Court

Bhagirath Bishnoi APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 76(12), 76(5)(a)

Citation : (2009) 11 Vat Reporter 155 : (2009) 24 VST 161

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for quashing impugned notice Annex.-1 dated 24.8.2008, notice Annex.-3 dated 26.8.2008, notice Annex.-4 and 5 dated 28.8.2008, notice Annex.-8 dated 29.8.2008, notice Annex.-10 dated 3.9.2008 and notice Annex.-15 dated 17.9.2008 and for setting aside the proceedings initiated against the petitioner in pursuance of the aforesaid notices.

2. According to brief facts of the case, the petitioner sent a consignment of SS circle in Truck No. R.1 01-G/3240 from Jodhpur to Chennai. On 24.8.2008, the said truck was seized by respondent No. 3 and a notice u/s 76(5)(a) of the Raj. VAT Act, 2003 (referred to hereinafter as "the Act") was given to the driver of the truck asking him to take the truck to RTO Chowki Mawli and the driver was directed to produce the bill book. The petitioner immediately submitted reply to the notice.

3. The case of the petitioner is that he has sent the consignment to M/s Vardan Enterprises, Chennai vide bill No. 42 dated 22.8.2008. The truck was carrying SS circle weighing 16196 kg and VAT form No. 49 was also accompanying the goods in question. The bill books were also produced by the petitioner as directed by respondent No. 3. Thereafter, a request was made by the petitioner to release the truck as he was bearing charges of Rs. 2,500/- per day.

4. The case of the petitioner is that after the first notice issued by respondent

No. 3 u/s 76(5)(a) of the Act, repeatedly other notices were issued under Sections 76, 67, 76(6) and 76(12) of the Act, stating therein that the goods in question was not sent by the petitioner from Jodhpur and, in fact, the truck was carrying goods of tax evaders. The petitioner contends that as per Section 76(5)(a) of the Act, the matter was to be decided finally within a period of 7 days by respondent No. 3; but, due to mala fide intention, it has not been finalized and he is suffering financial loss although he has supplied all the relevant documents as required by respondent No. 3, therefore, in view of the fact that the matter was to be decided within 7 days as per Section 76(5)(a) of the Act but before deciding the matter, respondent No. 3 has formed the opinion that the documents submitted by the petitioner are forged and respondent No. 3 is not releasing the vehicle of the petitioner although he is ready to furnish undertaking for the same. According to the petitioner, the action of the respondent is arbitrary and illegal being in contravention of the provisions of Section 76 of the Act, therefore, the writ petition deserves to be allowed.

5. Learned Counsel for the petitioner has invited my attention towards the judgment of the Supreme Court in State of Rajasthan and Anr. v. D.P. Metals (124) STC 611(SC), in which, the apex Court has held that the analogous provisions which were in force prior to the VAT Act u/s 74(2)(v) are nothing more than the provisions to facilitate the inspection of the goods carried from one State to another State and falls within Entry 54 of II List of VII Schedule of the Constitution of India; meaning thereby, provisions of Section 76(5)(a) are to the extent of inspection and not in respect of any other purpose.

6. Further, learned Counsel for the petitioner has invited my attention towards judgment of the apex Court, in Asstt. Commissioner. AE, Commercial Taxes, Bharatpur v. Amtek India Ltd. (2007) 7 VR 91, in which, the apex Court has held that action of the concerned assessing officer in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. The apex Court observed in para 15 & 16 that,- "This is a case where the officer should have been more careful and should not have acted in a manner as if he was a blood hound and not a watchdog of Revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of Revenue. Therefore, while holding that the action of the AA was clearly unjustified, we direct deletion of the direction for imposition of cost. We, however, make it clear that in future if any such action comes to the notice of the courts/authorities, appropriate action shall be taken in accordance with law and the observations made in this case about lack of bona fide shall also be a factor to be taken note of."

7. While citing the above judgments, learned Counsel for the petitioner argued that all requirements of the provisions of the Act were fulfilled by the petitioner but respondent No. 3 is unnecessarily harassing the petitioner and not releasing the vehicle though u/s 76(5)(a) of the Act, it is mandatory duty of the

respondent department to decide the matter within 7 days. Therefore, the whole proceedings initiated against the petitioner in which there is no substance may be declared invalid and the vehicle in question along with the goods may be ordered to be released immediately.

8. Per contra, by way of filing reply it is submitted by the respondents that the proceedings are going on and enquiry is being conducted and notice was given to the petitioner while he was asked to supply documents to explain why action should not be taken against him. Therefore, this writ petition is premature. The matter is still to be decided by the respondents upon the material and documents produced by the petitioner in pursuance of the notices issued by the respondent department in accordance with law.

9. It is submitted by learned Counsel for the respondent that the respondents have fully complied with the procedure prescribed u/s 76 of the Act and if the petitioner is desirous to get the goods and vehicle released then, u/s 75C, the goods can be released if adequate security will be furnished by the petitioner equal to the estimated value of the goods. Meaning thereby, all the remedies are available to the petitioner but despite admitted fact that the petitioner is having statutory remedy, he has straight away approached this Court which is not permissible and this writ petition, therefore, deserves to be dismissed on this ground alone because the petitioner has approached the Court against the notices issued in accordance with the provisions of the Act.

10. Learned Counsel for the respondents further argued that several allegations have been made against respondent No. 3 without impleading him as party in person, therefore, it is totally against the principles of natural justice to allege anything against the person who is not before the Court. As per the respondents, the petitioner is involved in illegal practice of tax evasion and causing direct loss to the revenue of the Government and ultimately the public exchequer, therefore the petitioner is not entitled to seek any relief while invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The respondents are ready to decide the matter but the petitioner is required to co-operate and appear before the respondents for adjudication of the matter. Learned Counsel for the respondents has invited my attention towards S.B. Civil Writ Petition No. 70 10/2007, decided on 7.3.2008, in which, this Court disposed of the writ petition in similar circumstances while directing the respondents to take final decision after proper adjudication in accordance with law within the stipulated time, therefore, in this case also, the respondents are ready to decide the matter in accordance with law, therefore, this writ petition which is premature may be dismissed.

11. I have considered the rival submissions.

12. In this case, obviously the petitioner is challenging the notices issued to him although the petitioner has brought to the notice of this Court certain facts with regard to his innocence so also, the fact that respondent No. 3 while issuing the

notice has asserted that forgery has been committed by the petitioner; meaning thereby, respondent No. 3 has presumed the illegality without deciding the matter finally. It is true that the authorities should not take decision with pre-occupied mind. They are required to act in accordance with law, therefore, in my opinion, the apex Court held in case of Assistant Commissioner, Anti Evasion, Commercial Taxes, Bharatpur v. Amtek India Ltd. (supra), that the officers should not act in a manner as if they are blood hound and not watchdogs of Revenue. The relevant para of the said judgment run as under:

(15) In this case though the action of the concerned assessing officer, in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. This is a case where the officer should have been more careful and should not have acted in a manner as if he was a bloodhound and not a watchdog of Revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of Revenue.

(16) Therefore, while holding that the action of the assessing authority was clearly unjustified, we direct deletion of the direction for imposition of cost. We, however, make it clear that in future if any such action comes to the notice of the courts/authorities, appropriate action shall be taken in accordance with law and the observations made in this case about lack of bona fide shall also be a factor to be taken note of.

(17) The appeal is accordingly disposed of.

13. In this view of the matter, this writ petition is hereby disposed of with a direction to the respondent department to decide the matter within a period of one week positively from today and, at the time of deciding the matter, the concerned authority shall not traverse beyond the ambit and scope of Section 76(5)(a) of the Act and shall ignore the allegations levelled in the notices impugned with regard to alleged forgery allegedly committed by the petitioner and shall decide the matter independently after providing opportunity of hearing to the petitioner, by a speaking order.

There shall, however, be no order as to costs.