(2015) 02 RAJ CK 0219

In the Rajasthan High Court

Case No : Sales Tax (VAT) Revision Petition No. 115 of 2014

Continental Containers APPELLANT

Vs

Assistant Commercial Tax Officer Flying Squad RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 76(2), 76(6), 84

Citation : (2015) 83 VST 497

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Devendra Kumar, for the Appellant

Judgement

J.K. Ranka, J.—The instant sales tax revision petition, under section 84 of the Rajasthan Value Added Tax Act, 2003 (in short, "the VAT Act") has been filed by the petitioner-assessee, assailing the order passed by the Rajasthan Tax Board, Ajmer (in short, "the Tax Board") dated 28.3.2013 in appeal No. 2252/2008/ Bharatpur.

2. The brief facts of the case are that the goods of the petitioner-assessee were being carried in vehicle bearing No. RJ-05-G-1783, was intercepted by the assessing officer (flying squad) of the revenue. In the said vehicle, goods being carried were tin sheets and were being transported from Delhi to Bharatpur. On verification from the Driver, he produced Bill No. 04/099 dt. 08.05.2008 for an amount of Rs. 5,50,638/-, bilty No. 500 dt. 08.05.2008, receipt of freight charges for Rs. 6,862/- Declaration form VAT-47 No. 1110692 was found which was totally blank, except that there was the seal of the firm. On enquiry and interrogation it was contended by partner of the firm that all the relevant documents were available and found with the vehicle supporting the claim of the assessee. However, in so far as the declaration form VAT-47 is concerned, there was no explanation offered by the assessee. Accordingly, on noticing the violation of section 76(6) of VAT Act, penalty @ 30% of the value of Rs. 5,57,500/- was levied at Rs. 1,67,250/-.

3. The matter was carried in appeal before the Dy. Commissioner (Appeals), who allowed the appeal by holding that all other documents were available with the vehicle and there was no reason to impose the penalty and accordingly penalty was deleted.

4. Dissatisfied with the order, the matter was carried in the appeal before the Rajasthan Tax Board by the Revenue who after analyzing the record and judgment rendered in the Guljag Industries Vs. Commercial Taxes Officer, (2007) 293 ITR 584 : (2007) 10 JT 1 : (2007) 9 SCALE 564 : (2007) 7 SCC 269 : (2007) 8 SCR 793 : (2007) 9 VST 1 , allowed the appeal of the Revenue. Hence this revision petition.

5. Learned counsel for the petitioner contends that substantial question of law emerge out of the order of the Tax Board. The first contention of the counsel for the petitioner is that the goods had reached its destination and once the goods reached destination, there was no control of the assessee. He laid emphasis on the explanation u/S. 76(2) of the VAT Act, to point out that goods in movement, shall mean that till the goods were on transit or in the way, therefore, he contends that under section 76(2), since goods reached the destination, the said section is inapplicable. He further contends that the goods had partly been unloaded and there can be no justification to levy, in view of explanation under section 76(2) of the VAT Act. He further contends that the material was duly supported by bills, vouchers, bilty etc. which has been admittedly found in order. However, he admitted that VAT-47 was blank. He, however contends that the judgment rendered in M/s. Guljag Industries (supra) is not applicable on the facts of the instant case. He relied on the judgment of this court in CTO, Dungarpur v. M/s. Hindustan Petroleum Corporation Ltd. 2011 Tax Up-date Vol.30 page 251.

6. I have considered the arguments advanced by the learned counsel for the assessee and in my view, admittedly VAT-47 was found absolutely blank except seal of the petitioner''s firm, therefore, the judgment of the Hon''ble Apex Court in the case of M/s. Guljag Industries (supra) is squarely applicable to the facts of the present case wherein the Hon''ble Apex Court has come to conclusion that if the material particulars in Form ST-18A, are found unfilled or left blank then for all practical purposes, there is no declaration form and the revenue was justified in imposing penalty, despite of the fact that vehicle was having other documents like bills, vouchers and bilty etc.- Admittedly, in the present case the VAT-47 has been found totally blank except the seal of the petitioner, therefore, in my view, the Tax Board was well justified in holding the penalty leviable by the assessing officer. Declaration Form VAT-47 and declaration form ST-18A are at par. I would also deal with the other contention of the counsel for the petitioner about the explanation under section 76(2) of the VAT Act which reads as under:

"The owner or a person duly authorized by such owner or the driver or the person

Incharge of a vehicle or carrier or of goods in movement shall-

(a) stop the vehicle or carrier at every check post or barrier, and while entering and leaving the limits of the State bring and stop the vehicle at the nearest check post or barrier, set-up under sub-section (1);

(b) carry with him a goods vehicle record including "challans" and "bilties", invoices, prescribed declaration forms and bills of sale or despatch memos;

(c) produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post or barrier;

(d) furnish all the information in his possession relating to the goods; and

(e) allow the inspection of the goods by the Incharge of the check-post or barrier or any other person authorised by such Incharge."

Explanation:--

For the purpose of this Chapter ''goods in movement'' shall mean-

(i) The goods which are in the possession or control of a transporting agency or person or other such bailee;

(ii) The goods which are being carried in a vehicle or carrier belonging to the owner of such goods; and

(iii) The goods which are being carried by a person."

7. In my view, the goods of the assessee can be said to be still in transit though reached destination as only part of goods were unloaded, if the goods have reached destination it does not mean that movement of goods had come to an end. The explanation prescribes that the goods which are in possession and control of transporting agency, the goods would continue to belong to the bailee/ owner. The said goods were being carried by transporter, therefore, when the goods were still under the possession and control of transporting agency. The goods were still in the vehicle though may be partly unloaded that does not mean that goods had been delivered to consignee. In my view, the explanation does not support the contention raised by the counsel for the petitioner. In the light of judgment of the Hon''ble Apex Court in M/s. Guljag Industries (supra) which is squarely applicable, no question of law can be said to arise, out of the order of the Tax Board as it is essentially a finding of fact, based on material on record and not at all referable in the light of judgment of the Hon''ble Apex Court in M/s. Guljag Industries (supra). Even otherwise, admittedly form VAT-47 was found blank and when it has been found blank and no explanation offered then it is finding of fact. The judgment of this Court in Hindustan Petroleum Corporation Ltd. (supra) is totally distinguishable on facts as even no explanation was offered as to why declaration form VAT-47 was totally blank.

8. The revision petition has no force and I do not find any infirmity, perversity or illegality in the order of the Tax Board. Accordingly the revision petition being devoid of merits is dismissed.

