(2016) 03 GAU CK 0017

In the Gauhati High Court

Case No : WP(C) 3089 of 2009

DHTC Logistics Ltd.	APPELLANT
Vs	
State of Assam and Ors.	RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:
Assam Value Added Tax Act, 2003 — Section 75(6)

Citation : (2016) 4 GauLJ 683 : (2016) 3 GauLT 291

Hon'ble Judges : Ajit Singh, C.J. and Hrishikesh Roy, J.

Bench : Division Bench

Advocate : Mr. D. Barman, Advocate, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, C.J.—Heard Mr. D Barman, learned counsel appearing for the petitioner. None appeared for the respondents.

2. This petition under Article 226 of the Constitution of India is directed against the order dated 8.7.2009 passed by the Commissioner of Taxes, Assam whereby he has dismissed petitioner''s Revision Petition No.CVAT-1/09(A)/63 and affirmed the order as passed by the Superintendent of Taxes, Boxirhat.

3. On 21.2.2009, a vehicle owned by the petitioner carrying TV sets was checked at Boxirhat check post. The driver of the vehicle was found carrying documents like Delivery Note, Consignee Note, Sale Invoice, Transit Pass etc. issued by the Dalkhola Check Post, West Bengal for only 30 TV sets. But on physical verification, the Enquiry Officer roughly estimated as per statement of the Driver that 330 TV sets were being carried. In the result, the goods were seized and show cause notice was issued to the Driver as to why advance tax and penalty equivalent to three times of tax shall not be imposed upon him under Section 75(6) of the Assam Value Added Tax Act, 2003 (for short ''the Act'').

4. On 10.3.2009, the Driver along with the Manager of petitioner submitted a

written reply to the show cause notice. They also filed additional documents like Delivery Note, Tax Invoice, Consignment Note etc. in support of additional items. In reply they submitted that the vehicle was seized in Uttar Pradesh on the instruction of Regional Transport Officer and was released on payment of tax. They further submitted that additional papers were left by the Driver due to oversight which were collected later and were being filed with the reply. On 10.3.2009, the petitioner filed a separate reply to the show cause notice on similar line.

5. The Superintendent of Taxes did not agree with the explanation of the petitioner and vide order dated 10.3.2009 passed the assessment order stating therein that the consignee had issued two delivery notes to the consignor for the same consignment on the same date which were not found to be in accordance with the provisions of the Act. The Superintendent of Taxes also held that even the Driver failed to produce Excise Gate Pass in movement of the said goods from the factory and relevant form of the Commercial Tax Department of Uttar Pradesh despite grant of sufficient time and opportunities. He, therefore, proceeded to assess advance tax and penalty as per Section 75(6) of the Act and held the amount payable was Rs.7,60,540.

6. Aggrieved, the petitioner filed revision before the Commissioner of Taxes, Assam, who dismissed the same by the impugned order. The operative part of the impugned order reads as under:

"The main contention of the petitioner is that the vehicle was intercepted by ARTO at Kushinagar in Uttar Pradesh for verification of documents relating to the vehicle and the driver. Some irregularity was found and after payment of due taxes the vehicle was realized. However, the ARTO inadvertently did not give documents relating to additional 354 T.V. sets and cabinets. The vehicle passed through Bengal Checkpost without documents for the additional items. The petitioner has annexed as Annexure-1 to the revision petition the money receipt issued by concerned ARTO and as Annexure-2 a certificate stating that the documents relating to 354 T.V. sets were left at the Checkpost in Uttar Pradesh. On 8.5.2009, the learned Advocate for the petitioner was asked to produce originals of Annexure-1 & 2. The learned Advocate produced the original of Annexure-1 on 4.6.2009 which was seen and returned. She prayed further time to produce original of Annexure-2. On 3.7.2009 she produced the original of Annexure-2 which has been kept at Sl. No.61 in the case record.

The Annexure-2 is not on official stationery and it signed by some authority other than ARTO. From the seal, it appears that the authority does not even belong to transport department of State of Uttar Pradesh. Further, in the Annexure-2 along with the revision petition which is a photocopy, the sign and seal appear on the right hand side and in the original submitted on 3.7.2009 the sign and seal appear on the left hand side. Hence Annexure-2 does not appear to be a genuine document. In view of the above it is not possible to reply upon Annexure-2 in support of the petitioner''s contention that the additional documents were written by ARTO, Uttar Pradesh. There appears to be an attempt to mislead the revisional authority.

Further, as noted by the learned Superintendent of Taxes, Boxirhat Checkpost, it is quite unusual that the same consignee will issue two delivery notes to the same consignor for two consignments on the same date which are being carried in the same truck. There is a strong likelihood that the delivery note for 354 televisions was obtained after seizure of goods at the checkpost.

In view of the above, it appears that there was an attempt to evade tax under the AVAT Act, 2003 and the action of Superintendent of Taxes, Boxirhat Checkpost in levying demand of advance tax and penalty appears to be justified.

I reject the revision petition and withdraw the stay on realisation of demand."

7. After hearing the learned counsel for the petitioner, we find ourselves in complete agreement with the view taken by the Commissioner of Taxes. The findings of Commissioner are well founded and unassailable. Learned counsel for the petitioner could not point out any illegality in the impugned order. No ground for interference is made out.

8. The petition has no merit and is accordingly dismissed.