(2007) 06 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 16155 of 2007

Hi-Rel Electronics Pvt. Ltd. APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 152
Constitution of India, 1950 — Article 226, 227
Gujarat Value Added Tax Act, 2003 — Section 32, 45, 46, 62, 67

Citation : (2007) 06 GUJ CK 0031

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : Keyur Gandhi, for Nanavati Associates, for the Appellant; S.S. Shah, learned Government Pleader assisted by J.K. Shah, learned Assistant Government Pleader, for the Respondent

Judgement

J.M. Panchal, J.—Rule. Mr.Sunit.S.Shah, learned Government Pleader assisted by Mr.J.K.Shah, learned Assistant Government Pleader, waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Articles 226 and 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to quash demand notice dated March 29,2007 issued by the respondent No. 3. i.e. Assistant Commissioner of Commercial Tax, Ward 24, Gujarat State under the provisions of Gujarat Value Added Tax Act, 2003 and Central Sales Tax Act calling upon the petitioner to make payment of Rs. 1,00,02,422/- as sales tax dues. The petitioner has further prayed to set aside the consequential notice for recovery dated May 21,2007 issued u/s 152 of the Bombay Land Revenue Code, 1879 in pursuance of provisions of Section 46 of the Gujarat VAT Act, 2003 as well as notice dated June 16,2007 issued u/s 45 of the Gujarat VAT Act, 2003 issued pursuant to assessment order dated March 28,2007.

3. The petitioner is a Company engaged in the business of manufacturing and marketing the un-interrupted power supply system, It is registered under the provisions of Gujarat VAT Act, 2003. During the time when the Gujarat Sales Tax Act, 1969 was in operation, the petitioner was paying tax at the rate of 4% as the product manufactured by it was considered as ?Selectronic goods?? under Entry No. 97(D) of Schedule 2 ?? Part-A of the Act. The case of the petitioner is that as per order u/s 62 dated June 13, 2001, passed in the matter of M/ s.V.R.Sons, the product i.e. uninterrupted power supply was considered as an ? SI.T.Product?? and 4% tax was being levied. By notice dated January 23,2007 issued under Sections 67, 70, 70/K, the respondent No. 3 called upon the petitioner to give details of products manufactured and marketed by it. The petitioner appeared before the respondent No. 3 and relied upon the determination order dated January 23,2001.The record shows that the petitioner has also filed an application u/s 62 of the Act before the competent authority, which is pending for disposal. On March 3,2007 the petitioner received notice u/s 32 indicating provisional assessment for a period from April 1, 2006 to January 31,2007. The Assistant Commissioner of Sale Tax passed an order of assessment dated March 28,2007 u/s 32 of the Act considering the product of the petitioner as ?Selectronic goods?? and called upon the petitioner to pay tax at the rate of 12.5%. On March 29, 2007 demand notice was issued calling upon the petitioner to pay a sum of Rs. 97,91,136/-. The petitioner filed an appeal u/s 73 before the Deputy Commissioner of Sales Tax against the assessment order dated March 28,2007. The said appeal is pending and is not yet disposed of. During the pendency of the appeal, the petitioner applied for stay and the petitioner was called upon by the appellate authority to deposit 20% of the amount due. As the petitioner was not able to comply with the said condition due to financial restraints, the petitioner applied on May 18,2007 to grant one month''s time. However, on May 24,2007 the petitioner received notice u/s 152 of the Bombay Land Revenue Code. The petitioner immediately approached the Commissioner of Sales Tax with a prayer to decide the determination application and direct the Assistant Commissioner of Sales Tax not to proceed with the recovery proceedings. The case of the petitioner is that on May 25,2007 the Commissioner of Sales Tax directed the Assistant Commissioner not to initiate coercive steps to recover the amount of tax due till June 2,2007. Since determination application was not decided, the petitioner made another application before the Commissioner of Sales Tax to direct the Assistant Commissioner of Sales Tax not to resort to coercive steps for recovery of amount due. According to the petitioner, the petitioner was called upon by the Commissioner of Sales Tax to give post dated cheques for the amounts due, which was not possible for the petitioner to issue due to financial crisis. The Bankers of the petitioner received notices dated June 16, 2007 u/s 45 of the Act, by which the Bank Accounts of the petitioner are attached. The case of the petitioner is that the petitioner is informed that the next date of hearing of the appeal was June 20,2007. What is maintained by the petitioner is that the action of the respondent in attaching the Bank Accounts without deciding the appeal preferred by it or deciding application

filed for determination of question raised therein,is bad in law. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs, to which reference is made earlier.

4. This Court has heard Mr.Keyur Gandhi, learned advocate for Nanavati Associates for the petitioner and Mr.S.S.Shah, learned Government Pleader, who has appeared on behalf of the respondents on service of advance copy of the petition in the office of the Government Pleader, High Court.

5. During the course of hearing of the petition, Mr. Keyur Gandhi, learned advocate for the petitioner, has produced the Challans indicating that the petitioner has deposited 20% of the amount due as directed by the appellate authority. Those Challans are ordered to be taken on record of the petition. The fact that 20% of the amount due is deposited by the petitioner is not in dispute. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the appellate authority is directed to dispose of the appeal filed by the petitioner within the time to be stipulated by the Court in this order and till the disposal of the appeal the respondents are restrained from resorting to coercive steps for the purpose of recovering the amount due.

6. For the foregoing reasons, the petition partly succeeds. The Deputy Commissioner of Commercial Tax, Appeal-3, Gandhinagar is hereby directed to decide the appeal filed by the petitioner against the assessment order as early as possible and preferably within three months from today. Till the appeal is decided, the respondents are restrained from resorting to coercive remedy for the purpose of recovering the amount due from the petitioner.

It may be stated that this Court has not gone into the merits of the matter. Hence it would be open to the parties to raise all contentions available before the appellate authority which shall be considered on merits.

7. Subject to above referred to directions and clarifications, rule is made absolute. There shall be no orders as to costs. Direct service is permitted.

