(2014) 03 GUJ CK 0062

In the Gujarat High Court

Case No : Tax Appeal Nos. 14 and 46 of 2014

Highness Coconut and Trading Co. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Gujarat Value Added Tax Act, 2003 — Section 28(2)

Citation : (2014) 44 GST 731 : (2015) 85 VST 356

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Manish K. Kaji, Advocate for the Appellant

Judgement

Akil Abdul Hamid Kureshi, J.—These appeals are interconnected. They are heard together and are disposed of by this common order. The appellant is common in both the appeals. The appellant was granted registration under the Gujarat Value Added Tax Act ("the V.A.T. Act" for short). It is the case of the appellant that earlier place of business was at Botad. However, proprietor of the assessee firm changed his location to Surat with intimation to the department also. On the ground that the appellant had transacted business with some of the dealers whose registrations were cancelled ab initio, the V.A.T. authorities issued notices and thereafter, passed order u/s 28(2) of the V.A.T. Act insisting that the appellant gives security of Rs. 10 lakh to secure the interest of revenue. Said order was passed on 14.8.2008. Against this appeal, the appellant appealed unsuccessfully to the Commissioner and thereafter, before the tribunal. In the meantime, since the appellant did not fulfill the condition of providing security, the registration came to be cancelled by an order dated 16.4.2010. Here also after approaching the Commissioner, the appellant preferred second appeal before the tribunal. The V.A.T. authority further initiated action for cancellation of registration ab initio, on the ground that the assessee had entered into certain dubious transactions of merely passing entries without sale and purchase of goods. Eventually, order was passed on 21.4.2010 cancelling the registration ab initio. Against such order, the appellant preferred revision petition before the tribunal. Cancellation ab initio was ordered also under the Central Sales Tax Act, giving rise to yet another revision petition before the tribunal.

2. All these proceedings were consolidated by the tribunal and disposed of by common judgment dated 24.7.2013. Two second appeals and two revision petitions were all dismissed. The appellant has therefore, preferred present tax appeals challenging the judgment of the tribunal rejecting the two second appeals of the assessee.

3. We are informed that though the assessee is in the process of filing writ petitions against that portion of the judgment of the tribunal by which revision petitions were dismissed, so far such petitions are not filed.

4. We have therefore, only examined present tax appeal. We notice that the only ground on which the authority imposed the heavy condition of security of Rs. 10 lakhs was that the assessee had certain transactions with the dealers whose registrations were cancelled ab initio. At least, from the record of this order it emerges that assessee did not indulge in any bogus billing activity. To this issue, the assessee had pointed out to the authorities that he had no bogus dealing with such dealers, in some of the cases dealers had also questioned the cancellation of their registration and lastly, that the assessee had never defaulted in filing returns or paying tax. We have also perused the turnover and tax liability of the assessee in the years immediately preceding when the proceedings were initiated. Considering the turnover of the assessee and the probable tax liability in our opinion, condition of security deposit of Rs. 10 lakhs is too harsh though the power to impose such restrictions certainly is available in terms of section 28(2) of the V.A.T. Act. Counsel for the assessee stated under instructions that the assessee is not interested in doing any further business under such registration. His only demand is to avoid any complications with parties who might have made purchases from him.

5. Considering such circumstances, condition imposed by V.A.T. authority is modified by requiring the appellant assessee to give security to the tune of Rs. 2 lakhs in terms of section 28(2) of the V.A.T. Act. The appellant would have time upto 20.4.2014 to do so.

6. In view of above orders, both the tax appeals are allowed in part. We clarify that we have expressed no opinion on the action of the authority in cancelling the registration ab initio for which separate proceedings parallely have gone on. It is further clarified that this order shall have effect only if such cancellation is set aside. Both the tax appeals are disposed of in above terms.