(2015) 04 RAJ CK 0117

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 23 of 2010

Kalra Steel Traders APPELLANT

Vs

Assistant Commercial Taxes Officer RESPONDENT

Date of Decision : 30-04-2015

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

Citation : (2015) 83 VST 506

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

Bench : Single Bench

Advocate : Devendra Kumar and Dinesh Kumar, for the Appellant; Tanvi Sahai on behalf of R.B. Mathur, Advocates for the Respondent

Judgement

J.K. Ranka, J.—This Revision Petition is directed against order dt. 28/10.2009 passed by the Tax Board, Ajmer in Appeal No. 1378/2008 whereby the order passed by Deputy Commissioner. (Appeals), Bharatpur was set aside and the order passed by the Assessing officer was restored.

2. The brief facts of the case are that the petitioner is dealing in the business of TMT Bar and during the course of its business, it sold goods to one M/s. Bharat Iron Store, Alwar and the said goods were being transmitted on 29/09/2007 in vehicle No. RJ-29-G-1629 owned by M/s. Rajdhani Transport Company, Nai Mandi, Bharatpur. It was the contention of the assessee that along with the said vehicle, bill No. 986 dt. 28/10/2007 as also the bilty of the said transport company No. 485 dt. 28/10/2007, were also available which were found on interception by the officers of the Anti Evasion Wing at Rajgarh Road, Alwar and prima-facie, the bill and bilty appeared to be bogus and suspicious under section 76(6) of the Rajasthan Value Added Tax Act, 2003.

3. On a show cause notice issued by the respondent, the assessee produced regular bill book and office copy of the bill book of invoice No. 986 dt. 28/10/2007 and it was noticed by the officer that there was variation in both the copies (Original as well as office copy). The officer further noticed that there was

variation in writing also which was quite substantial and it was noticed by the officer that initially the office copy was kept blank and therefore, there was suspicion and the office copy had been prepared after the show cause notice was issued and accordingly dissatisfied with the explanation so offered, imposed the penalty under section 76(6) of the Rajasthan Value Added Tax Act, 2003 holding that the documents produced at the time of checking are false and forged.

4. Dissatisfied with the said imposition, the appeal came to be preferred by the assessee before the Dy. Commissioner (Appeals), who was satisfied with the explanation so offered and deleted the penalty.

5. Dissatisfied with the deletion of the penalty, the Revenue filed an appeal before the Rajasthan Tax Board, who allowed the appeal of the Revenue and upheld the penalty inter-alia holding that there could not have been difference at all in the original as well as office copy and on perusal of both original as well as photo-copy which were available in the file of the Assessing Officer, came to the conclusion that though the facts and figures may be same but the writing was entirely different and it appeared that the office copy was prepared later on.

6. Learned counsel for the assessee contended that the penalty has been imposed on mere surmises and conjectures as well as assumption and presumption and in a case of penalty like this, merely on the basis of suspicion, penalty cannot be imposed. He further contended that there was no difference at all in between the original as well as the office copy and one could not have been faulted merely on the basis that there was variance between the two. He further contended that there was no intention of Tax Evasion, all the relevant documents were available with the vehicle and there is no occasion for disbelieving the invoice which was produced at the time of interception along with bilty and other receipts. He further contended that books of accounts were produced and nothing adverse was found by the officer after perusing of the books of accounts where the sale was duly recorded. He further relied upon the judgments in the case of Hindustan Construction Company Ltd. Vs. Union of India (UOI)., AIR 1967 SC 526 : (1967) 1 SCR 843 ; A.C.T.O. Vs. Yaswant and Company, (1994) 95 STC 374 ; M/s. Badri Lal Kedar Lal Agarwal, Sawaimadhopur v. ACTO, F.S.-II, Zone-II, Jaipur (2007) Tax-Up-Date vol.19 P.253a& Asstt. Commercial Taxes Officer, Flying Squad-I, Ajmer v. Mahalaxmi Oil Industries, Merta City, District Nagaur (2001) 29 RTJS 87.

7. Per-contra, ld. counsel for the revenue contended that clear cut case of Tax Evasion was made and noticed as there was serious doubt by the Anti Evasion Wing when the vehicle was intercepted and no proper records were maintained by the assessee. She further contended that the assessee was unable to prove that why there was variance in the original as well as the office copy. She contended that the Tax Board as well as the Assessing Officer have clearly come to a finding of fact that the office copy was prepared later on and therefore, there was variance in writing in the original as well as the office copy. She further contended that, if the vehicle would not have been intercepted the assessee

would have been able to carry the vehicle and send the goods without payment of tax and the assessee would have gone scot-free and would have destroyed the original after goods having been delivered.

8. I have considered the arguments advanced by the counsel for the parties and in my view, no interference is required in the order of the Tax Board as the Tax Board on finding of fact has come to the conclusion that there was vital difference in writing in the original invoice viz-a-viz the office copy. If the bill was prepared simultaneously with the carbon (as in this case), there could be a variation of the line as on account of non placing the carbon copy in a proper manner in the office copy line may shift down on sides but there cannot be a difference in the writing which has been noticed by the Assessing Officer and a finding of the fact has been recorded by the Tax Board. It has also been noticed by the Tax Board that the original invoice was not found at the time of inspection of the vehicle but was later on produced and finding of the Tax Board is that it was prepared later on when the vehicle was intercepted and in the original bill book one bill was left blank.

9. The Tax Board on perusal of both the original invoice as well as the office copy has noticed that there is quite variation in between the two original as well as the office copy and when the same has been noticed by the Tax Board, in my view, it is essentially based on finding of fact and no question of law can be said to emerge when a finding of fact has been reached by the Tax Board. Accordingly, in my view, no question of law can be said to emerge out of the order of the Board. I do not find any infirmity, illegality or perversity in the order impugned passed by the Tax Board.

10. Accordingly, the revision petition stands dismissed in limine.