(2011) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4882 of 2011

Karni Singh APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Value Added Tax Act, 2003 — Section 77

Citation : (2012) 56 VST 352

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Nikhil Dungawat on behalf of Dr. P.S. Bhati, for the Appellant; Siddarth Tatiya on behalf of V.K. Mathur, for the Respondent

Judgement

Vineet Kothari, J.—The petitioner, a contractor, who was awarded a contract for collection of sales tax u/s 77 of the Rajasthan Value Added Tax Act, 2003 (for short, hereinafter referred to as "the Act of 2003"), has approached this court by way of present writ petition being aggrieved by order dated February 1, 2010 passed by the respondent-CTO, Barmer, demanding a proportionate amount of contract amount of Rs. 67,56,546 vide annexure 8 on account of short fall of the instalment amount of contract for 253 days reducing the contractual amount of Rs. 1,58,18,000 for the period April 23, 2010 to April 22, 2011 reducing the same proportionately for 253 days for the period April 23, 2010 to December 31, 2010 to Rs. 1,09,64,258 since the petitioner-contractor paid for this period only a sum of Rs. 47,08,200 thus, the balance amount along with interest was Rs. 67,56,546 sought to be recovered by passing the said order dated February 1, 2010. The learned counsel for the petitioner, Mr. Nikhil Dungawat, urged that the contract period was cut-short by the respondent-Department vide notification dated December 31, 2010 (annexure 5) since the casual commodities, viz., "bajri", "morum" and "kankar" were exempted from the payment of tax itself vide notification dated January 1, 2011; and therefore, there was no requirement of said check-post/tax collection centre for which the petitioner was awarded the said contract for the period up to April 22, 2011.

2. The said assessing authority, therefore, proceeding as per clause 12 of the contract, which is reproduced hereunder for ready reference, read with rule 44 of the Rajasthan Value Added Tax Rules, 2006, which are in same terms, proportionately reduced the contract amount and short-fall in the payment, was sought to be recovered with interest.

3. The clause 12 of the contract in pari materia with rule 44, clause (i) of the VAT Rules, reads as under:

12. The contractor shall deposit the entire collected tax or the 1/52nd part of the annual tax revenue for which the contract is being awarded, whichever is higher, on every Monday in the State treasury or the banks authorized for the purpose through a challan in form VAT 37 and in the event Monday being holiday, such amount shall be deposited on the immediately following working day. On completion of the contract period, if it is found that the amount deposited by the contractor is more than the estimated annual tax revenue for which the contract is being awarded as well as the actual tax collected by him, such excess deposited amount shall be refunded to the contractor.

4. The learned counsel for the petitioner submitted that since most of the period of the contract for which the petitioner-contractor operated was a off-season, and the collection of tax was much lesser up to December 31, 2010, whatever collection of tax was made, was duly deposited with the respondent-Department, however, when peak season of the business came, the contract was prematurely terminated vide the aforesaid notification annexure 5 dated December 31, 2010. He, therefore, submitted that condition of clause 12 and rule 44 of demanding the higher of the two, viz., instalment of contract amount and actual collection of the tax, could not be enforced against the petitioner. He prayed for quashing of the said order, however, in the alternative, he submitted that he has made a representation in this regard to the assessing authority vide annexure 1 dated February 11, 2011, which is still pending and the said authority may be directed to decide such representation of the petitioner objectively and sympathetically.

5. On the other hand, Mr. Siddarth Tatiya, learned counsel for the respondent-Department urged that there is no breach of contract on the part of the respondent-authority or Commercial Taxes Department; and as such under rule 44 and clause 12 of the contract, the respondent-authority was legally empowered and duty-bound to recover the said difference amount with interest since the contract amount is recoverable and tax payable under the provisions of the Act as per rule 44 read with section 77 of the Act. He, therefore, submitted that the impugned order is unassailable and since the contract period could be reduced by the respondents since the commodities in question themselves were exempted from the payment of tax, leaving no requirement of such check-posts being there, the demand in question is justified and the same is not required to be quashed by this court.

6. Having heard learned counsels for the parties, this court is of the opinion that no interference in the impugned order is called for, since prima-face the same appears to be in order and the recovery of the difference amount could be made from the contractor as per afore-quoted clause 12 read with rule 44 and section 77 of the Act. The grievances raised by the petitioner that most of the period for which the contract operated up to December 31, 2010, was an off-season being rainy season as far as construction work is concerned, where these casual commodities are used, is a matter of representation and questions of facts to be decided by the authorities created under the Act itself. It is not for this court to pronounce upon such facts in writ jurisdiction under article 226 of the Constitution of India. Since, the petitioner has already made a representation to the respondent-assessing authority and he may even make his representation further to the higher authorities (Commissioner) as well, it is expected that such competent authority will decide the representation of the petitioner objectively and fairly in the light of circumstances narrated above. The concerned authority shall decide the representation of the petitioner preferably within a period of three months from today or in case a fresh representation is filed before the Commissioner, the same shall be decided by the said authority within three months from the date of filing of such representation. No interference by this court in the present writ petition is called for, therefore, the present writ petition is disposed with aforesaid liberty. No costs.