
(2006) 05 RAJ CK 0022
In the Rajasthan High Court

Man Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 79

Citation : (2007) 8 VST 720

Hon'ble Judges : Rajesh Balia, J;R.P. Vyas, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—We have heard the learned Counsel for the parties.

2. The petitioner was granted a contract of collection of sales tax on "bajri" in terms of the Section 79 of the Rajasthan Sales Tax Act, 1994 for a period of two years from March 21, 2002 to March 20, 2005. This collection was to be made in respect of contract of tax collection and establishment of check-post, point of Balotra area, in circle Banner. For the first year the contractor was to pay Rs. 25,00,200 and security amount Rs. 6,25,006 was deposited. The rate at which collection of tax on the commodity bajri was to be calculated as per Clause 11 of the contract which provided rate at Rs. 6 per ton. In the alternative the composition fees at Rs. 60 per tractor, per truck Rs. 120 and Rs. 240 per turbo trolar.

3. During the continuance of the aforesaid contract the petitioner was served with a show cause notice, annexure 17, dated April 22, 2003 informing the petitioner that a complaint has been received that the petitioner is collecting composition fee compulsorily, notwithstanding that the weighment slip of weigh-bridge was produced before it. It was informed in the notice that in respect of following trucks, a complaint has been lodged along with the production of the weigh-slip, royalty receipt in respect of each of the following trucks:

Truck number Date

R.J. 04 1232 22.3.2003 R.J. 19 1126 23.3.2003 R.R.R. 1476 22.3.2003 R.J. 04

4. It was also stated in the notice that earlier also the Deputy Commissioner, Administration has advised the contractor vide his letter dated March 28, 2003 that he has to collect ordinarily at rate of Rs. 6 per ton and composition fee may be charged only if the casual trader or person in control of goods gives you option for payment of composition fees. Notwithstanding this advice, it was alleged that contractor continues to collect composition fees from each vehicle and number of other trucks were also referred in respect of which, according to show cause notice, the Assistant Commissioner has conducted inquiry.

5. The notice, annexure 17, was replied to by the contractor stating that he is charging the tax only as per the notification, and whosoever produces weigh slip, tax as per the rate fixed at Rs. 6 per ton is only collected. But where the weigh slip is not produced the composition fees is being paid by the respective person-in-charge of the vehicle carrying bajri.

6. This followed the impugned order, annexure 19, dated May 13, 2003 holding the petitioner-contractor guilty of recovering Rs. 60 as composition fees from each vehicle by discarding weigh slip in breach of the contract, and, therefore, the contract was cancelled. The balance of the contract money was sought to be recovered and security was ordered to be forfeited.

7. The order is founded on the report collected by the Deputy Commissioner who had deputed the Assistant Commissioner to hold enquiry and report. He is alleged to have recorded certain statements of tractor owners, from which inference was drawn that the employees of contractor are indulging in making forged signatures on the receipts as acknowledgement of consent.

8. The writ petition was filed, raising a number of grounds including that the order has been passed in complete breach of principles of natural justice. It was contended by the contractor that before making impugned order, annexure 19, dated May 13, 2003, the petitioner was never informed about alleged inquiry conducted by the Assistant Commissioner, Commercial Taxes Department nor was he informed about alleged statement taken/ recorded by the Assistant Commissioner on oath from certain tractor owners. Neither the report of the Assistant Commissioner nor the statement which has been made foundation of the order were made available to the petitioner. It was also alleged that no finding could have been recorded on the basis of ex parte statement recorded against the petitioner without affording him an opportunity of cross-examination by furnishing him such ex parte statements. It was also pointed out by the counsel for the petitioner that along with the reply of the respondents the so called statements obtained on oath have been placed on record. In none of those statements it has been stated that any person making statement had with him weigh slip and notwithstanding producing weigh slip, contractor has demanded composite fees. Hence the order is founded on non-existent material.

9. It was also urged by the counsel for the petitioner that rate of tax has been fixed by the State in exercise of powers conferred under the Act of 1994 vide two notifications. Vide first notification dated January 15, 2003 the rate of tax for bajri was fixed at Rs. 6 per ton. Vide another notification dated January 15, 2003 while granting exemption from payment of tax on bajri condition was imposed that in such event the composition fees shall be paid at the rate stated for tractor, truck and turbo trailer as noticed above. It is on the basis of two notifications the rate of tax whether per ton or composite fee was directed to be recovered by the contractor from every tractor, truck and turbo trolar passing through the check-post.

10. The respondents in their reply had supported the order and had stated that no principles of natural justice have been breached inasmuch as the petitioner-contractor was put to notice by serving a show cause notice. His reply was taken into consideration and after taking into consideration the material on record, the impugned order, annexure 19, was passed.

11. We have gone through the material placed before us. Counsel for the petitioner submitted that the alleged weigh slips which have been referred to in show cause notice, allegedly carried by the person in control of the vehicle and it was alleged that notwithstanding weighment slip the contractor insisted on payment of composition fees, so such weigh slips have not been produced on record. So far as statements are concerned which have been placed compositely marked as annexure R8 it supports the contention of the learned Counsel for the petitioner that none of the statements support the allegation that the contractor was charging the composition fees notwithstanding the presentation of weigh slip and all sundry statements only state the capacity of the vehicle and existence of receipt of composition fees but most of persons stated that they did not have weigh slip with them and others also are silent about having any weigh slip with them. Apparently, it is option of the person carrying bajri in any vehicle either to pay tax on the actual weight or to pay composition fees. The suggestion made in the impugned order that the tractor owners were to submit their option before competent officer to avail benefit of exemption by paying composition fee, does not appear to be justified inasmuch as tax is to be collected on spot only from every vehicle passing through check-post. It is on the spot the person-in-charge has to make choice either to get weighment of vehicle and obtain weigh slip to pay tax accordingly, or it may choose to pay composition fee and pass on. Requirement of written option is not part of the procedure prescribed. It is also amply substantiated from record that alleged enquiry by the Assistant Commissioner was conducted without including contractor in the enquiry and every material collected by the Assistant Commissioner at the back of contractor has been used against him without informing him about such material, and without giving him any opportunity to explain such adverse material. Thus, the order is incomplete breach of the principles of natural justice.

12. The impugned order suffers from yet another vice of being a non-speaking

order.

13. The impugned order is eloquently silent about contents of reply and it rejects the contention raised by the petitioner by a one-line observation that contractor has not been able to give satisfactory reply. It is not a matter of subjective satisfaction of the Deputy Commissioner that an order of such adverse nature can be brought about. The Deputy Commissioner is required to give a well reasoned order. The order is not even appealable and it affects the contractor adversely. The minimum that is required of the Deputy Commissioner or any authority exercising power is to make available to the affected person the material on which the authority wants to rely and he is put to explain such material. If demanded he has to be given opportunity to lead evidence. In case statements are recorded of any person in his absence then copies of such statements must be furnished to the affected party and he must be allowed to cross-examine those witnesses, if so demanded. Apparently, all these safeguards have not been observed by the Deputy Commissioner while making the impugned order. Therefore, on this ground alone the order cannot be sustained.

14. Learned Additional Advocate-General appearing for the State has tried to urge from the material on record that there is some material adverse to the petitioner-contractor. Suffice it to say that if any material is available on record, the petitioner ought to be informed about it before using it against the contractor and given an opportunity to explain such adverse material. That is a minimum requirement of fair play and principles of natural justice, applications of which have not been excluded.

15. In the aforesaid circumstances, the appeal is allowed and impugned order dated May 13, 2003 is set aside. Any order passed in consequence to the impugned order, also stands set aside and the Deputy Commissioner, Commercial Taxes or any person competent above the rank of the Deputy Commissioner is directed to pass a fresh order after giving adequate opportunity of hearing to the contractor-petitioner. This opportunity would include supply of copy of every document or material on which Revenue wants to place reliance against the contractor. It will be open for the petitioner to rely on the respective material in his possession or if necessary to lead evidence or to call the witnesses examined by department for their cross-examination. However, we caution, that affording of adequate opportunity does not mean the liberty to protract the proceedings indefinitely. In case contractor-petitioner is not co-operating with the proceedings, it will be open for the officer concerned to proceed with enquiry expeditiously and shrink the protraction of proceedings through appropriate measures.

16. However, no refund shall be made to the petitioner until final orders are passed in respect of show cause notice issued to him, by holding a fresh enquiry as aforesaid.

17. There shall be no order as to costs.