(2014) 12 RAJ CK 0134

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12942/2014 and Civil Misc. Stay Application No. 11905/2014

Mukesh Kumar APPELLANT

Vs

Assistant Commercial Taxes Officer RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 76(5)(a), 83, 83(7), 89

Citation : (2014) 12 RAJ CK 0134

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sarvesh Jain, Advocate for the Appellant; R.B. Mathur and Nikhil Simlote, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—Mr. R.B. Mathur, learned counsel has put in appearance on behalf of the respondent. Service is complete.

2 This writ petition has been filed by the petitioner aggrieved by non-release of his truck and the goods loaded therein.

3. The petitioner contends that he is a driver of truck bearing No. HR 38L-3388 belonging to M/s. Maa Kela Goods Carrier, New Delhi. Assistant Commercial Taxes Officer, Anti Evasion, Ward-III, Circle-I, Jaipur checked the aforesaid truck on 23.08.2014 near Kaman Marg Railway Crossing, Deeg, Bharatpur. The truck was carrying grocery goods from Delhi to Gujarat. Assistant Commercial Taxes Officer, Anti Evasion, Ward-III, Circle-I, Jaipur detained goods along with the truck. According to the said Officer, TIN numbers of the parties were not found in existence and goods were not according to documents. Hence, he transferred the matter to Assistant Commercial Taxes Officer, Anti Evasion, Ward-I, Circle-I, Jaipur(for short ''Assessing Authority''). Assessing Authority issued notice to the petitioner on 02.09.2014 proposing levy of tax and penalty. The petitioner submitted reply to said notice on 16.09.2014 stating therein all defence regarding transaction and that the goods were to be transported from Delhi to

Gujarat and the same were not to be unloaded in the State of Rajasthan. Assessing Authority rejected the submission of the petitioner and passed order dated 19.09.2014. Aggrieved thereby, the petitioner preferred appeal before the Appellate Authority, who vide order dated 16.10.2014 stayed part of the demand on the condition of furnishing security to the satisfaction of Assessing Authority. Aggrieved thereby, the petitioner preferred appeal before the Rajasthan Tax Board, Ajmer (hereinafter referred to as ''Tax Board''). The petitioner relied before the Tax Board upon the decision in the case of State of Rajasthan & Another v. M/s. Sodhi Transport Co. and Anr., (2001) 10 Sales Tax Today 219 and prayed that the remaining amount of demand be also stayed on furnishing adequate security to the satisfaction of the Assessing Authority. The Tax Board vide order dated 30.10.2014 stayed the remaining demand till the decision of appeal pending before appellate authority or three months, which ever is earlier, requiring the petitioner to submit security to the satisfaction of the Assessing Authority within 15 days from the date of receipt of the order. The Tax Board also directed the appellate authority to decide the appeal within three months from the date of receipt of the order.

4. Learned counsel for the petitioner submitted that the respondent in the garb of Indemnity as provided under Section 89 of the Rajasthan Value Added Tax Act, 2003(for short ''RVAT Act'') has impeached the fundamental right of the petitioner provided to him by the Constitution of India by illegally detaining truck along with goods beyond seven days as provided under Section 76(5)(a) of the RVAT Act. Learned counsel for the petitioner has relied upon decisions rendered by this Court in the cases of Raj Auto Wheels Pvt. Ltd. v. Commercial Tax Officer, Ajmer & Others (S.B. Civil Writ Petition No. 3073/2012 decided on 14.03.2012 along one another writ petition) and M/s. Apollo Surgicals v. the State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 10422/2012) and argued that in the aforesaid cases, similar conditions were imposed upon the petitioners therein and this Court directed the respondents therein to release the goods subject to petitioners therein furnishing security by way of submitting a bond in RVAT Form 64 along with two sureties acceptable to the authorised officer as per the provisions of Rule 77 of the Rajasthan Value Added Tax Rules, 2006 (for short ''RVAT Rules''). It is contended that Section 83(7) of the RVAT Act would be applicable to only a dealer and not to driver.

5. Mr. R.B. Mahtur, learned counsel for the respondent-department has submitted that Section 83 of the RVAT Act provides that the Tax Board, during the pendency of an appeal before it, shall not stay any proceeding but it may, on an application in writing from the dealer, stay the recovery of the disputed amount of tax or any other sum or any part thereof on the condition of furnishing adequate security to the satisfaction of the assessing authority or the officer authorised by the Commissioner in this behalf. Learned counsel for the respondent submitted that Rule 77 of the RVAT Rules also provides four modes of furnishing of security, which also includes bank guarantee. In the present case the respondent is insisting upon the petitioner to furnish bank guarantee, which

is one of the modes provided in sub-clause (iii) of Rule 77 of the RVAT Rules because the petitioner is a truck driver not belonging to State of Rajasthan, but he is from the State of Uttar Pradesh. Therefore, if eventually, the goods are released, the recovery of the tax and penalty would be difficult. It is argued that even a driver, as an agent of principal, would be covered by the definition of dealer and therefore on that basis, the petitioner cannot escape the liability.

6. Learned counsel for the petitioner rejoined and submitted that sub-clause (iv) of Rule 77 of the RVAT Rules gives ample power to the respondent to satisfy about genuineness of the sureties offered by the petitioner and the petitioner is ready to submit two local sureties. Therefore, there is no reason why discriminatory attitude be adopted qua the petitioner only because he happens to be resident of Uttar Pradesh. No citizen can be discriminated on the basis of place of residence. Besides, the petitioner has disclosed to the respondent, name of the party whose goods he was carrying as carrier and it is for the respondent to verify the same. He has also asserted that the goods were not to be unloaded in any part of State of Rajasthan. It is now for the respondent to verify the genuineness of the stand of the petitioner and for the present, truck and goods may not be unduly detained.

7. Having regard to the facts aforesaid and also taking into consideration the above-referred judgments, I find that the matter has to be decided on the basis of aforesaid arguments as well as on merits by the first appellate authority because Tax Board in its order dated 30.10.2014 has already directed the first appellate authority to decide the appeal within a period of three months. Although there are four modes provided in Rule 77 of the RVAT Rules, but there is no reason for the respondent to insist upon the petitioner for furnishing bank guarantee, who according to its own showing is a driver and the respondent in the case of other identical parties has adopted last mode of furnishing of security i.e., executing a bond in Form RVAT-64, with necessary modifications where necessary, with two sureties acceptable to the officer or authority concerned.

8. Ends of justice therefore would meet if the respondent is directed to release the goods along with truck of the petitioner on furnishing of security for a sum of Rs. 13,55,303/- by way of submitting a bond in RVAT Form 64 along with two sureties, as per his offer, of local parties, acceptable to the authorised officer, as per provisions of Rule 77 of the RVAT Rules within ten days.

9. Writ petition is disposed of accordingly. Stay application also stands disposed of. This order would be coterminous with the disposal of appeal by the Deputy Commissioner(Appeal) on the date fixed before it. The parties may appear before him on 15.12.2014.

