(2010) 05 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No''s. 3628, 3629 and 3679 of 2010

Oceanic Solvent Industries APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 67

Citation : (2011) 36 VST 463

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : N.C. Shukla, for the Appellant; Pranav Dave, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—In the light of the fact that the controversy involved in these petitions lies in a narrow compass, the same are taken up for final hearing today. Hence, rule. The learned Assistant Government Pleader is directed to waive service of rule.

2. Since common order dated July 21, 2009 made by the Gujarat Value Added Tax Tribunal (the Tribunal) is subject-matter of challenge in all these petitions and the parties are also common, the same were taken up for hearing together and are decided by this common judgment.

3. The Petitioner is engaged in the business of manufacturing and marketing edible oil and oil-cakes. The Petitioner was assessed for the periods 1998-99, 1999-2000, 2000-01 and 2601-02 vide separate orders made by the Assistant Commissioner of Sales Tax, Circle 37, Jamnagar. The said orders of assessment were taken in revision by the Joint Commissioner of Sales Tax u/s 67 of the Gujarat Sales Tax Act, 1969 (the Act) and purchases from certain dealers were disallowed on the ground that they were bogus dealers and the said purchases from registered dealers outside the State of Gujarat were treated as purchases

from unregistered dealers. Being aggrieved the Petitioner challenged the said order before the Tribunal by way of revision applications. The Tribunal after taking into consideration the documentary evidence produced by the Petitioner remanded the matter to the revising authority to decide the matter on the basis of the said documentary evidence. The revising authority on re-examining the matter and considering the documentary evidence, allowed the claims of purchases from registered dealers outside the State of Gujarat except one Gajanand Traders, Mumbai. Thus the claims of purchases from Gajanand Traders came to be disallowed and the same were considered as purchases from unregistered dealer and demands were raised for the periods 1998-99, 1999-2000 which resulted in reduction of refund for the year 1999-2000. The Petitioner, therefore, filed three revision applications before the Tribunal being Revision Application Nos. 95, 96 and 97 of 2007. According to the Petitioner it had supplied entire documentary evidence in support of its claim of genuine purchases as enumerated under paragraph 6 of the petition. That the revising authority merely relied upon the report of the investigating team of the Sales Tax Department without supplying a copy thereof to the Petitioner.

4. The Tribunal noted that the revising authority had relied on the inspection report as well as letter dated March 28, 2007 written by the Assistant Commissioner, Rajkot and that it was not clear as to whether the Petitioner had been provided with copies thereof. The Tribunal, vide the impugned order dated July 21, 2009, therefore, set aside the orders impugned before it and remanded the matters to the revising authority for fresh and appropriate consideration in light of the judgment after providing an opportunity of hearing to the Petitioner and take a decision on the merits according to the provisions of law.

5. Heard the learned advocates for the parties.

6. Mr. N. C. Shukla, learned advocate for the Petitioner, has vehemently assailed the impugned order of the Tribunal. It is submitted that when all the relevant facts as well as documentary evidence were already there before the Tribunal, the Tribunal ought to have adjudicated the matter on the merits and was not justified in remanding the matter to the revising authority. As regards the findings recorded by the Tribunal in paragraph 5 of the impugned order to the effect that it was not clear as to whether the Petitioner had been provided with copies of the report of the investigation team as well as the report and letter of the Assistant Commissioner, because of which the Tribunal thought it fit to remand the matter, the learned advocate for the Petitioner has stated on instructions that the Petitioner is not desirous of availing of such opportunity and that the Petitioner is ready and willing to proceed with the revision applications without copies of the said documents being provided to it. The learned advocate for the Petitioner has emphasized that the Tribunal had at the first instance already remanded the matter to the revising authority and that this was the second time in the same proceedings that the matter was again remanded to the revising authority. It is emphatically argued that instead of again remanding the

matter to the revising authority, the Tribunal ought to have decided the applications on the merits on the basis of the record available with the Tribunal.

7. As can be seen from the impugned order of the Tribunal, in paragraphs 5 and 6 thereof the Tribunal has recorded thus:

Therefore, it is clear that the learned revising authority has totally relied on the inspection report as well as letter dated March 28, 2007 written by the Assistant Commissioner, Rajkot and report of the investigation team who had visited various States. It is not clear whether copy of the said order and letter are given to the Appellant or not. It is not clear whether the Appellant was given an opportunity of hearing to represent against the report of the Assistant Commissioner as well as investigation team or not Therefore, the order passed by the learned revising authority is not legal and valid on two counts. Therefore, the learned revising authority has solely relied on earlier reports without independently inquiring and considering the evidence produced by the Appellant. The revising authority has decided the revisional application on this point without giving an opportunity to the Appellant for hearing as well as without providing copy of the said reports to the Appellant.

6. Therefore, this matter should be remanded back to the learned revising authority to consider fresh on this point after providing copy of the reports of the Assistant Commissioner, letter written by the Assistant Commissioner and copy of the investigation team who has visited various States and material collected about the Gajanand Traders, Mumbai and provide an opportunity of hearing to the Appellant to represent this case on this point.

8. Thus it is apparent that what has weighed with the Tribunal while remanding the matter to the revising authority is the fact that it was not clear as to whether the Petitioner had been supplied with the documents in the nature of report of the Assistant Commissioner, letter of the Assistant Commissioner as well as report of the investigation team on which the revising authority had placed reliance while passing the orders impugned before it. It was only with a view to satisfy the principles of natural justice by affording the Petitioner an opportunity of hearing in relation to the documents on which reliance had been placed by the revising authority, that the Tribunal had remanded the matter to the revising authority. In the circumstances, no infirmity can be found in the approach adopted by the Tribunal. However, as stated by the learned advocate for the Petitioner under instructions, the Petitioner does not desire to avail of such opportunity and maintains that the revision applications should be decided by the Tribunal on the basis of the record availably with the Tribunal. The Petitioner, accordingly, has waived its right of being provided with copies of the documents referred to hereinabove.

9. In the aforesaid facts and circumstances, when'' the Petitioner is giving up its right to be supplied with the copies of the report of the Assistant Commissioner, letter written by the Assistant Commissioner as well as reports of the

investigation teams which had visited different States of the country on which reliance had been placed by the revising authority, as well as the opportunity to deal with the same, no prejudice would be caused to the Respondents if the prayer made in the petition is accepted.

10. In the light of the aforesaid the petitions succeed and are accordingly allowed. The impugned order dated July 21, 2009 made by the Tribunal is hereby quashed and set aside only because of the Petitioner waiving its right as recorded hereinbefore. It is made clear that as it is the impugned order of the Tribunal does not suffer from any legal infirmity. Revision Application Nos. 95, 96 and 97 of 2007 are restored to the file of the Tribunal. The Tribunal shall decide the matters afresh in accordance with law, after giving an opportunity of hearing to the Petitioner. The Petitioner shall not raise any contention as regards non-supply of the copies of the inspection report, and letter dated March 28, 2007 of the Assistant Commissioner, Rajkot, as well as the report of the investigation team which had visited various States. Rule is made absolute to the aforesaid extent in each of the petitions.

11. It is clarified that considering the view that has been adopted by the court, the court has not gone into the merits of the case.

12. Registry to place a copy of this order in each of the petitions.

