(2013) 05 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 7877 of 2013

Pratik Manhendra Gandhi — APPELLANT

Vs

State of Gujarat and Another — RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Gujarat Value Added Tax Act, 2003 — Section 45

Citation : (2013) 63 VST 178

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : N.C. Shukla and Tushar P. Hemani, for the Appellant; Jaimin Gandhi, Assistant Government Pleader, for the Respondent

Judgement

Akil Kureshi, J.—The petitioner has challenged an order dated February 6, 2013 as at annexure A to the petition passed by respondent No. 2 u/s 45 of the Gujarat Value Added Tax Act, 2003 ("the VAT Act", for short). Under such order, respondent No. 2 has provisionally attached the bank account and the petitioner''s stock of brass scrap in which the petitioner is dealing with, pending assessment of the petitioner''s liability to pay value added tax with interest and penalties. The learned counsel for the petitioner submitted that the powers u/s 45 of the VAT Act are drastic. The exercise thereof should be confined to the rare and exceptional cases. In the present case, there is no material to suggest that there is any outstanding duty remained against the petitioner. Learned counsel for the petitioner further submitted that the petitioner has been dealing in brass scrap and other similar items, since several years. The petitioner is enjoying registration by the VAT authority. At the time of spot visit of the petitioner''s business premises by the officials of the respondent-authorities also, the physical stock tallied with the stock register of the petitioner. He, therefore, submitted that the petitioner is not liable to pay any additional tax. Learned counsel for the petitioner further pointed out that the respondents are relying on cancellation of registration of some of the dealers from whom the petitioner has purchased such goods to deny the tax credited thereof to the petitioner. He submitted that all purchases were made prior to the cancellation of registration and therefore, such denial is completely unjustified.

2. On the other hand, learned Assistant Government Pleader Mr. Jaimin Gandhi for the respondents opposed and contended that the purchases made by the petitioner were not genuine. The investigation revealed that in some cases where dealers from whom such purchases were said to have been made were bogus. In some cases, the transportation and weighing location did not match with the actual purchase and movement of goods.

3. Since, the assessments are pending, as stated by the learned Assistant Government Pleader, we would not like to make any conclusive statement in respect of rival contentions. Further, we cannot ignore the fact that an order of provisional assessment u/s 45 of the Act pending, attachment before the judgment is a drastic measure. In our opinion, a workable formula can be provided under which, the petitioner may restart the business subject to further investigation and assessment.

4. Broadly, we have following factors in mind.

(1) That as pointed out, the petitioner''s bank account has balance of Rs. 3,986.48, which is of no great significance to the Department.

(2) Currently, the petitioner''s stock worth Rs. 72,56,480 is under attachment.

(3) It is not pointed out by the respondent that there was any discrepancy in the physical stock and stock reflected in register, at the time of spot visit.

(4) It is the case of the petitioner that with respect to the dealers whose registrations were cancelled the purchase was made by the petitioner prior to the date of cancellation.

5. Broadly bearing in mind above facts, we are of the opinion that the provisional attachment is required to be lifted subject to the petitioner maintaining certain minimum stock. This would on one hand, enable the petitioner to restart the business and on the other hand, safeguard the interest of the Department pending assessment.

6. Under the circumstances, the order of attachment is ordered to be lifted on the conditions that the petitioner would maintain minimum stock of the value of Rs. 35 lakhs, till the assessments are completed. An undertaking to this effect shall be filed before the court latest by May 10, 2013. Only upon filing of such undertaking this order will come into force. The petition is disposed of.