(2011) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5392 of 2008

Rose ZINC Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Citation : (2012) 48 VST 260

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Khet Singh for J.P. Joshi, for the Appellant; Siddharth Tatia on behalf of V.K. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—This writ petition is directed against the show-cause notice issued by the assessing authority, namely, the Assistant Commissioner, Commercial Taxes, Anti Evasion, Circle in, Jaipur, on the ground that on the basis of survey conducted at the business place of the petitioner-assessee on September 1, 2007, the case of evasion of tax was made out against the petitioner as the purchases of zinc sulphate and zinc dross shown in the books of account was far less than the value of imports shown by the assessee and therefore, on the undervalued purchases shown in the books of account, the assessing authority called upon the assessee to show cause as to why the purchase tax and consequential penalty may not be imposed upon him. The assessee instead of filing any reply to the said show-cause notices has directly challenged these notices before this Court in the present writ petition.

2. The Learned Counsel for the petitioner Mr. Khet Singh for Mr. J.P. Joshi, senior advocate, urged that the assessing authority of Anti Evasion Wing of Commercial Taxes Department could not have issued these notices and they were without jurisdiction as the only regular assessing authority could do so. He also submitted that there was no tax evasion on the part of the assessee and even the returns were filed before the regular assessing authority and consequently

such notices could not be issued and the same, therefore, deserve to be quashed by this Court.

3. On the other hand, the Learned Counsel for the Revenue Mr. Siddharth Tatia on behalf of Mr. V.K. Mathur submitted that the writ petition is not maintainable as the assessee is free to show-cause before the assessing authority. He also justified the issuance of show-cause notice on the basis of discrepancies found during the course of survey conducted on September 1, 2007 at the business place of the assessee.

4. Having heard the Learned Counsels, this Court is of the opinion that it would be premature to decide the validity of show-cause notice in the present writ petition. The assessee is expected to explain the discrepancies in the valuation or quantity of imports shown in the regular books of accounts. It cannot be said that the notices issued are without jurisdiction. It is the duty of the anti evasion authority to prevent and check the evasion of tax and therefore, upon a survey of business place, if certain discrepancies are found by the assessing authority, then show-cause notice can always be issued to the assessee requiring him to furnish his explanation in the matter. Therefore, this Court is not inclined to entertain the present writ petition against the issuance of show-cause notice only. Accordingly, the present writ petition being devoid of merit is liable to be dismissed and the same is accordingly dismissed. No order as to costs.