(2014) 11 TP CK 0038

In the Tripura High Court

Case No : Civil Revision Petition No. 116 of 2012

S.C. Paul VsThe Commissioner of Taxes

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2014) 11 TP CK 0038

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : B.N. Majumder, Advocate for the Appellant; S. Chakraborty, Addl. GA, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—The petitioner is a wholesale dealer of Kirloskar brand pumps. A consignment of goods being transported by the petitioner from Guwahati to Agartala was stopped at the Churaibari Check-post. A large number of goods were part of the consignment but seizure was made only in respect of one item i.e., KU 4-2509 S 3HP 220V Single Phase Submersible Pump sets with C.P. The petitioner had shown the valuation of these pump sets at Rs. 18,000/- per set i.e., Rs. 90,000/- for 5 sets. The seizure was made of these sets on two grounds that whereas only five sets have been declared, actually 10 sets were being carried and secondly, on the ground that the petitioner had under-valued the same at Rs. 18,000/- whereas the market value of each set was Rs. 29,800/- since the MRP of each pump was Rs. 30,120/-. As far as the first issue is concerned, the petitioner has been repeatedly stating that what he has transporting was only 5 sets of submersible pumps which consisted of 5 motors and 5 pumps. A combination of one motor and one pump comprised one submersible pump set unit.

2. The revision petition filed by the petitioner was dismissed by the Commissioner and he filed this revision petition. During the pendency of the revision petition, vide interim order, the seized goods were ordered to be released on furnishing a bank guarantee. By an additional affidavit list of the goods which are now been released has been annexed and this reads as follows:

Delivery of 10 Numbers Kirloskar Make Pump Sets Model No. KU-42509S against

Seizure Case No. 373/CRB/11-12 dated 19/06/2011

3. Therefore, what have been released is 5 motors and 5 pumps. Interestingly, the motor and the pump bear the same serial numbers which clearly indicates that there were 5 sets. The maximum sale price is also of the entire set and is not of separately for the motor and separately for the pump. Therefore, we agree with the petitioner that only 5 sets were being transported and as such, the seizure on this ground is illegal.

4. As far as under valuation is concerned, we are doubtful whether seizure could have been made but since a long time has elapsed and the petitioner has furnished bank guarantee, we feel that the appropriate direction should be to remand the case to the Commissioner of taxes who shall take into consideration the documents and other materials which the petitioner may file in support of his case that the value of each pump set was not Rs. 29,800/- but only 18,000/-. In this regard, we may point out that Mr. B.N. Majumder, learned counsel has drawn our attention to the supply order dated 13.03.2009 in which similar pump sets have been purchased by the Government @ Rs. 22,382/-. Mr. Majumder also states that the petitioner is willing to pay all penalty and tax as assessed if the Government itself purchases the pump sets @ Rs. 28,800/-. We cannot in a revision proceeding decide what is the market value of the pump sets. We must also remember that the petitioner is a wholesale dealer and may be selling goods even to the retailers.

5. We, therefore, remand the matter to the Commissioner of Taxes who shall determine the value of the 5 sets as per the wholesale market value existing at the time of seizure. Both the department and the petitioner shall be at liberty to produce evidence before the Commissioner who shall take into consideration the entire evidence before taking a decision thereon. The parties are directed to appear before the Commissioner of Taxes on 20th November, 2014 and the Commissioner of Taxes shall dispose of the matter latest by 28th February, 2015.

6. In view of the above discussion, the order of the Commissioner of Taxes is set aside and the matter is remanded to him with the aforesaid order. In case the Commissioner finds that the value of the seized goods i.e. the pump sets is not Rs. 29,800/- but a lower value then the proportional amount of tax along with interest at the statutory rate shall be refunded to the petitioner latest by 31st May, 2015 failing which the department shall be liable to pay interest @ 12% per annum.