

(2015) 03 GUJ CK 0106

In the Gujarat High Court

Case No : Tax Appeal Nos. 1306 and 1307 of 2014

Scrap Recycling Private Limited

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Gujarat Value Added Tax Act, 2003 — Section 27, 27(5), 27(5)(i), 67, 70

Citation : (2015) 82 VST 410

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Harsh Pathak for Ashish H. Shah, for the Appellant; Chintan Dave, Additional Government Pleader, Advocates for the Respondent

Judgement

M.R. Shah, J—As common questions of law and facts arise in both the tax appeals, both these appeals are decided and disposed of by this common judgment and order. Feeling aggrieved by and dissatisfied with the impugned common judgment and order dated July 25, 2013 passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad (hereafter referred to as "the learned Tribunal") passed in Second Appeal Nos. 500 of 2010 and 501 of 2010, by which the learned Tribunal has dismissed the said appeals preferred by the common appellant herein, the common appellant herein has preferred the present tax appeals to consider the following questions of law:

"(i) Whether the honourable Tribunal has erred in interpreting and construing provisions of section 27(5)(i) of the Act?

(ii) Whether the honourable Tribunal has erred in not strictly and literally interpreting the provisions under section 27(5)(i) of the Act in accordance with the rules of interpretation which specifically states that a taxing statute has to be strictly and literally construed?

(iii) Whether the honourable Tribunal has erred in not finding that the authority or DCCT has no power or jurisdiction to cancel the registration of the purchaser

(dealer) under section 27(5)(i) of the Act?

(iv) Whether the honourable Tribunal has erred in not finding that the provisions of section 27(5) of the Act are not applicable to the dealer who purchases the goods?

(v) Whether the honourable Tribunal has erred in not finding that there was no intention to defraud the Government revenue inasmuch as the appellant has suffered tax and paid the invoice amount with tax to the seller and therefore, the provisions of section 27(5)(i) are not applicable to the case of the applicant?

(vi) Whether the honourable Tribunal has erred in not finding that the transactions entered into by the applicant were genuine and supported by documentary evidences such as bank books, cash books, purchase and sales registers, purchase and sales bills, stock registers, weighbridge receipts, lorry receipts and vouchers?

(vii) Whether the honourable Tribunal without appreciating the material on record has erred in finding that the appellant has failed to prove the genuineness of the documentary evidence in spite of there not being any challenge to the authenticity or veracity of the documentary evidence and whether the burden of proof for proving the genuineness of the documentary evidence shifts on the appellant despite there being no contention raised doubting the genuineness of the same?

(viii) Whether the honourable Tribunal has erred in passing the impugned order based on inferences and conjectures?"

2. The facts leading to the present appeals in nutshell are as under:

2.1 That the appellant is carrying on business of trading and dealing in iron and iron scrap. That the appellant was registered under the provisions of the Gujarat Value Added Tax Act (hereinafter referred to as "the VAT Act") bearing registration No. 24160600679. That the appellant was also registered under the Central Sales Tax Act bearing registration No. 24660600679. That during the course of the business, the petitioner carried out business with one Sheth Metal Private Limited. That the appellant filed returns under the provisions of the VAT Act as well as CST Act.

2.2 That the Deputy Commissioner of Commercial Tax, Nadiad, issued a show-cause notice dated January 6, 2010 in form No. 401 under the provisions of sections 67, 70 or 70(a) of the VAT Act calling upon the appellant to produce the documents mentioned in the notice or else the registration certificate shall be cancelled ab initio. It appears that the appellant appeared before the Deputy Commissioner of Commercial Tax and produced the document on January 21, 2010. That the Deputy Commissioner of Commercial Tax issued a communication dated February 5, 2010 calling upon the appellant to clarify the points mentioned in the said communication. That the appellant vide communication dated February 22, 2010 submitted pointwise clarification as asked for by the Deputy

Commissioner of Commercial Tax. That thereafter, straightway, the Deputy Commissioner of Commercial Tax vide order dated February 26, 2010 had cancelled the registration certification of the appellant ab initio under the provisions of the Gujarat Sales Tax Act (the GST Act) and Central Sales Tax Act (the CST Act).

2.3 Feeling aggrieved by and dissatisfied with the order of the Deputy Commissioner of Commercial Tax cancelling the registration certificate of the appellant ab initio, the appellant preferred appeals before the first appellate authority and the first appellate authority by judgment and order dated April 27, 2010, dismissed the said appeals by observing that the appellant had shown purchases from one Sheth Metal Private Limited for the period between May 28, 2009 to June 28, 2009 for the total value of Rs. 1,09,91,577. However, the above transactions were not tallied with the returns filed by the said Sheth Metal Private Limited and the registration of the said Sheth Metal Private Limited has been cancelled ab initio. It appears that the first appellate authority also found some other discrepancies and came to the conclusion that the appellant had issued only bills without entering into the transaction of sale to defraud the Government revenue. By observing above, the first appellate authority confirmed the order of cancellation of registration of certificate.

2.4 Feeling aggrieved by and dissatisfied with the order dated April 27, 2010 passed by the first appellate authority, the appellant preferred Second Appeal Nos. 500 of 2010 and 501 of 2010 before the learned Tribunal and by the impugned judgment and order, the learned Tribunal has dismissed the aforesaid appeals.

2.5 Feeling aggrieved by and dissatisfied with the impugned common judgment and order passed by the learned Tribunal dismissing the aforesaid appeals and confirming the order of cancelling the registration certificate of the appellant ab initio, the common appellant has preferred the present tax appeals with the aforesaid substantial questions of law.

3. Shri Pathak, learned advocate for Shri Shah, learned advocate appearing on behalf of the appellant has vehemently submitted that the learned Tribunal has materially erred in dismissing the appeals preferred by the appellant and confirming the order of cancelling the registration certificate of the appellant ab initio.

3.1. It is further submitted by learned advocate appearing on behalf of the appellant that the learned Tribunal has not properly appreciated the fact that as such, before cancelling the registration certificate ab initio of the appellant in purported exercise of powers under section 27(5)(i) of the VAT Act, no show-cause notice has been issued and served upon the appellant calling upon the appellant to show cause as to why the registration certificate of the appellant is not cancelled as ab initio.

3.2 It is further submitted by learned advocate appearing on behalf of the

appellant that as such, the first authority passed an order cancelling the registration of the appellant ab initio in purported exercise of the powers under section 27 of the VAT Act, for which no previous show-cause notice was issued. Learned advocate appearing on behalf of the appellant has drawn our attention to the communications annexed at annexure A collectively and has contended that the aforesaid communications were merely in the nature of requiring the appellant to produce the document and information. It is submitted that these communications were followed by another communication dated February 5, 2010, under which, the appellant was required to examine certain adverse allegations. It is submitted that however, there was no proposal that on the basis of such allegations being established, the registration certification of the appellant was liable to be cancelled. It is submitted that therefore, the entire action of cancelling the registration of the appellant has been taken without any show-cause notice as required under section 27(5)(i) of the VAT Act. It is submitted that therefore, as such, the order passed by the Deputy Commissioner of Commercial Tax-first authority cancelling the registration certificate of the appellant ab initio is absolutely illegal against the principles of natural justice and contrary to the provisions of the VAT Act, more particularly, section 27(5)(i) of the VAT Act. It is submitted that the aforesaid aspect has not been appreciated by the learned Tribunal while deciding the appeals.

3.3 The learned advocate appearing on behalf of the appellant has also tried to make other submissions on merits, however, for the reasons stated hereinafter, this court proposes to remand the matter to the first authority and to pass appropriate order in accordance with law and on merits and after giving an opportunity to the appellant to show cause as to why the registration certificate of the appellant should not be cancelled ab initio, we do not propose to further enter into the merits of the case.

4. The learned Additional Government Pleader Mr. Dave has tried to support the order passed by the first authority, first appellate authority and the impugned judgment and order passed by the learned Tribunal. He has submitted that when it was found that the appellant had entered into the billing activities only and when it was observed that the appellant had shown purchases from one Sheth Metal Private Limited whose registration certificate was cancelled ab initio and when it was found that the transactions with the said Sheth Metal Private Limited had not tallied with the returns filed by Sheth Metal Private Limited and other discrepancies were found and when it was found that the appellant had issued only bills without entering into transaction of sale to defraud the Government revenue, the first authority had rightly cancelled the registration certificate ab initio. However, he is not in a position to dispute and he is not disputing that as such, before cancelling the registration certificate ab initio in exercise of powers under section 27 of the VAT Act, no show-cause notice had been issued upon the appellant to show cause why the registration certificate of the appellant be not cancelled ab initio.

5. Heard learned advocates appearing for the respective parties at length. We have perused the order passed by the first authority cancelling the registration certificate of the appellant ab initio passed in purported exercise of powers under section 27 of the VAT Act as well as the order passed by the first appellate authority and the impugned judgment and order passed by the learned Tribunal.

6. At the outset, it is required to be noted that the first authority-Deputy Commissioner of Commercial Tax had cancelled the registration certificate of the appellant ab initio in purported exercise of the powers under section 27 of the VAT Act. It appears that however, prior to cancellation of the registration certificate ab initio, no show-cause notice had been issued and served upon the appellant calling upon the appellant to show cause why the registration certificate of the appellant be not cancelled ab initio. Considering the provisions of section 27(5)(i) of the VAT Act and even it is cardinal principles of law that before passing any adverse order having civil consequences, opportunity of hearing is required to be given. From the earlier notice, it appears that the appellant was simply called upon to produce certain documents and even to explain the discrepancies. However, at no point of time, the appellant was called upon and/or informed that on the basis of the aforesaid inquiry and/or discrepancies, if any, the registration certificate of the appellant is required to be cancelled ab initio. Even, section 27(5)(i) of the Act provides that before cancelling the registration certificate ab initio, an opportunity of hearing is required to be given to the concerned person whose registration certificate is sought to be cancelled ab initio. Under the circumstances, the order passed by the first authority canceling the registration certificate ab initio can be said to be in breach of principles of natural justice and even in breach of section 27(5)(i) of the VAT Act. The aforesaid has not been considered and/or dealt with by the learned Tribunal while passing the impugned order and dismissing the appeals. From the impugned judgment and order passed by the learned Tribunal, it appears that what is weighed with the learned Tribunal is the observations made by the first appellate authority that the purchases shown by the appellant from one Sheth Metal Private Limited and purchase bills bearing Nos. 45 to 49 do not tally with the returns filed by the said, Sheth Metal Private Limited and in the observations made by the first appellate authority, it found some other discrepancies that the appellant had issued only bills without entering into the transaction of sale to defraud the Government revenue. However, it is required to be noted that even for that, the appellant was required to be confronted with the returns filed by the said Sheth Metal Private Limited, so that the alleged transaction by the appellant with said Sheth Metal Private Limited can be tallied and an opportunity is required to be given to the appellant on the aforesaid entries/purchase bills and/or its alleged purchases from the said Sheth Metal Private Limited. All these aforesaid aspects have not been considered and/or dealt with by the learned Tribunal while passing the impugned judgment and order. Under the circumstances, we are of the opinion that the impugned orders deserve to be quashed and set aside and the matter is required to be remanded

to the first authority to pass appropriate order in accordance with law and on merits and after giving an opportunity to the appellant on the issue of cancellation of the registration certificate ab initio. As agreed by learned advocate appearing on behalf of the appellant, the impugned order passed by the first authority-Deputy Commissioner of Commercial Tax and the first appellate authority be considered as show-cause notice calling upon the appellant to show cause why its registration certificate be not cancelled ab initio.

7. In view of the above and for the reasons stated hereinabove, the impugned common judgment and order dated July 25, 2013 passed by the learned Tribunal in Second Appeal Nos. 500 of 2010 and 501 of 2010 as well as the order passed by the first authority cancelling the registration certificate of the appellant ab initio and even the order passed by the first appellate authority are hereby quashed and set aside and the matter is remanded to the first authority, i.e., Deputy Commissioner of Commercial Tax to pass appropriate order in accordance with law and on merits and after giving an opportunity of hearing to the appellant. As agreed, the order passed by the first authority cancelling the registration certificate ab initio and the order passed by the first appellate authority be considered as show-cause notice calling upon the appellant to show cause why the registration certificate of the appellant may not be cancelled ab initio in exercise of powers under section 27 of the Act. Now, the appellant to reply to the aforesaid show-cause notice before appropriate authority within a period of four weeks from today and thereafter, the appropriate authority to pass an appropriate order in accordance with law and on merits under section 27(5) of the Act after giving an opportunity to the appellant and in light of the observations made hereinabove. The aforesaid exercise shall be completed within a period of three months from the date of submitting the reply to the show-cause notice as observed hereinabove.

8. With this, the present tax appeals are allowed to the aforesaid extent. In view of disposal of the tax appeals, no order in the civil applications and are disposed of accordingly.