(2011) 12 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5830 of 2007

Shaid Ali and Another APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:
Constitution of India, 1950 — Article 226
Rajasthan Value Added Tax Act, 2003 — Section 76(6), 82

Citation : (2011) 12 RAJ CK 0043

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Dinesh Mehta, Mr . Siddharth Tatia on behalf of, for the Appellant; V.K. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Dr. Justice Vineet Kothari

1. This writ petition has been filed by the driver of tanker No.HR-55A-0854 on 10.9.2007 aggrieved by the impugned assessment/penalty order dtd.13.9.2007 passed by the Incharge, Check Post, Commercial Taxes Department, Mandar, Circle Sirohi. At the time of filing of the writ petition, show cause notice upon checking of the vehicle on 2.9.2007 was issued to the said driver - incharge of the vehicle and on apprehension that the goods were not tallying with the documents accompanying the goods, the said authority seized the goods and initiated the penalty proceedings u/s 76(6) of the Rajasthan VAT Act, 2003.

2. During the course of penalty proceedings from the statement of said Driver recorded by the said authority, he found that after the documents being sealed at the exit check-post at Mandar, Circle Sirohi, the driver was instructed to take further instruction s for delivery of the goods on mobile number 9837053447 and according to the further instructions, the goods were to be delivered to the person concerned. The said authority also got sample of high speed diesel in the quantity of 18000 ltrs. in the said vehicle, checked from the approved lab at

Ahmedabad and it was found from the report that " the above product was failing of diesel. It is of inferior quality. It is mixed petroleum product and not diesel as per IS 1400:2000". The said authority therefore, passed the impugned order on 13.9.2007, which has been challenged subsequently by filing amendment application and copy of same is Annex.8 on record.

3. The learned counsel for the petitioner, Mr. Dinesh Mehta urged that since the goods were coming from Delhi and going to Gandhidham within the State of Gujarat, the goods were only passing through the State of Rajasthan and after obtaining seal on these documents at exit Check-post at Mandar, Circle Sirohi, the said authority had no jurisdiction to initiate proceedings u/s 76(6) of the Act and consequently, the notice as well as the impugned order Annex.8 dtd.13.9.2007 deserve to be quashed in the present writ petition. He also submitted that there was breach of principles of natural justice as the case was adjourned on 11.9.2007 for assessee to appear on 13.9.2007 and on 13.9.2007 itself, the order could not have been passed.

4. On the other hand, learned counsel for the Revenue, Mr. Siddharth Tatia on behalf of Mr. V.K. Mathur submitted that there is an alternative remedy by way of appeal available to the petitioner against the impugned penalty order u/s 76(6) of the Act as per Section 82 of the Rajasthan VAT Act and the impugned order imposing penalty @30% of the value of the goods of Rs.1,67,400/- and 12.5% VAT of Rs.69,750/- is justified. He also submitted that the disputed questions of facts as to whether the goods were to be delivered within the State of Gujarat or to some consignee in the State of Rajasthan only as per the instructions to be given to the driver on the given mobile number or not are disputed questions of facts, which cannot be determined in the present writ petition.

5. Having heard the learned counsels, this Court is of the view that the present writ petition cannot be entertained in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India at this stage in view of availability of alternative remedy by way of appeal available to the petitioner u/s 82 of the Act. While issuing the notices of this writ petition, the coordinate Bench of this Court on 25.9.2007 had passed the following order :

List this petition for writ for admission on 26.11.2007. In the meanwhile the respondent No.2 is directed to release the vehicle No.HR-55A-0854 alongwith the seized goods subject to the condition that the petitioner submits a solvent security for a sum of Rs.2 lacs and also furnish an undertaking that in the even of dismissal of this petition for writ he will satisfy the demand so made. It is made clear that the respondent while seeking solvent security from the petitioner shall not insist to furnish such security by a person resident of State of Rajasthan.

Sd/-

(GOVIND MATHUR) J.

6. The question as to whether the goods were merely passing through the State

of Rajasthan or not and whether they were actually to be delivered to the shown consignee at Gandhidham within the State of Gujarat or to somebody in the State of Rajasthan itself or not are questions of facts. Upon a doubt or even on reasonable apprehension, if the assessing authority on checking the goods in question and upon recording the statement of the driver concerned, he could reasonably have an apprehension that the goods could be delivered even within the State of Rajasthan or that goods were different from the description given in the relevant documents is sufficient to initiate the assessment and penalty proceedings u/s 76(6) of the Act and to impose tax and penalty u/s 76(6) of the Act. Further the fact that the goods were not even of quality described in the relevant documents like bill and bilty and initial enquiry conducted by the assessing authority obtaining the lab report from Ahmedabad further fortified his doubt that the commodity in question was mixed or adulterated petroleum product and was not high speed diesel as claimed in the documents was a sufficient ground to initiate the proceedings. In these circumstances contending that the assessing authority had no jurisdiction in the matter to initiate the penalty proceedings would be like putting a seal of approval, even if some illegality stares in the face. Such an approach cannot be appreciated by this Court. The impugned order itself is an exparte order. Therefore, it appears that the assessee has not produced the relevant evidence or has not cooperated in the enquiry. Be that as it may, these questions of facts can only lead to hold that it would be improper to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. The assessee has alternative remedy by way of appeal also in the matter. He should agitate these questions before the appellate forums created under the Act.

7. In these circumstances, the present writ petition is dismissed with a liberty to the petitioner to approach the appellate authority. No order as to costs.

