(2015) 02 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5388/14 & Civil Writ Petition No. 6940/13

Shree Balaji Trading Company APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 18, 18(1), 18(3)(v), 21, 23

Citation : (2015) 02 RAJ CK 0112

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Dinesh Mehta, for the Appellant; V.K. Mathur, Advocates for the Respondent

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned legality of assessment order dated 28.3.13 passed by the Assessing Authority, the Assistant Commissioner, Commercial Taxes Department Circle B, Jodhpur under Section 23/24 of Rajasthan Value Added Tax Act, 2003 (for short "the Act"), disallowing input tax credit claimed.

2. The petitioner, proprietorship concern, a dealer registered under the Act, engaged in trading business entered into purchase transactions with various dealers, namely, M/s. Pooja Trading Company, M/s. Vishal Traders and M/s. Shree Arbuda Trading Company etc. during the assessment year 2010-11. The petitioner filed the quarterly returns under Section 21 of the Act, claiming input tax credit quantified at Rs. 1,00,80,654/-.

3. The Assessing Authority vide assessment order dated 28.3.13, while reversing the input tax credit to the tune of Rs. 55,00,492/- created the demand of Rs. 66,69,141/- against the petitioner. Hence, this petition.

4. Precisely, the case of the petitioner is that as per the provisions of Section 18(3)(v), the Assessing Authority may deny the input tax credit to the assessee if the assessee fails to prove the genuineness of purchase transaction on being

asked to do so, but then, before holding a purchase transaction to be non genuine, the Assessing Authority has to arrive at the finding of inadequacy, insufficiency or involvement of element of fraud/forgery in relation to the documents submitted by the assessee for claiming input tax credit. It is submitted that an assessee is not required to prove that the tax has been paid to the State at the first point of sale in series of ensuing sales. Learned counsel submitted that it is impossible for a dealer to trace the entire chain of purchase transactions and procure the proof of payment of tax by the dealer who originated the sale. According to the petitioner if the selling and purchasing dealers have collected and deposited the tax on the value of the underlying sale, any anterior or posterior link in the series would have no bearing on the transactions. It is submitted that the Assessing Authority has disallowed the input tax credit to the petitioner to the tune of Rs. 55,00,492/- by passing a non speaking order, merely on the ground that petitioner has not been able to produce the proof of payment of tax at the point of origin of sale and therefore, orders impugned deserve to be set aside.

5. On the other hand, learned counsel appearing for the respondents submitted that as per provisions of Section 18(1) of the Act and Rule 18 (6) of the Rules, an assessee claiming input tax credit is required to prove the factum of payment of tax at the first point in series of the sales. It is submitted that input tax credit has to be disallowed to the assessee unless genuine tax invoices issued by the selling dealer are produced in support of the claim. Learned counsel would submit that the burden to prove genuineness of transaction before the Assessing Authority is on the dealer claiming input tax credit and since the petitioner has failed to discharge the burden, the impugned assessment order passed by the Assessing Authority disallowing the claim for input tax credit, is just and proper.

6. I have considered the rival submissions of the learned counsel for the parties and perused the material on record.

7. Indisputably, a registered dealer other than the dealers covered under sub-section (2) of Section 3 or Section 5 of the Act are entitled for input tax credit in respect of the purchase of any taxable goods for the purposes specified under Section 18 of the Act, to the extent and in such manner, as may be prescribed. But then, as per provisions of sub-section (3)(v) of Section 18, no input tax credit shall be allowed where purchasing dealer fails to prove genuineness of the purchase transaction on being asked to do so by the Assessing Authority.

8. Adverting to the facts of the present case, it is to be noticed that pursuant to the summon issued by the Assessing Authority asking the petitioner to prove the genuineness of the purchase transaction, the petitioner filed a reply and produced the books of account, original VAT invoices, bilties etc.

9. A bare perusal of the assessment order reveals that the Assessing Authority has disallowed the input tax credit to the petitioner observing that the dealers M/s. Puja Trading Company, M/s. Vishal Traders and M/s. Shree Arbuda Trading

Company have not deposited the tax payable at the first point in the series of the sales. The stand taken by the petitioner in the reply filed has been rejected by the Assessing Authority without consideration by merely recording its ipse dixit. There is no finding recorded by the Assessing Authority regarding the collected tax being deposited by the selling dealer in respect of the purchase transactions entered into by the petitioner. Further, the involvement of the petitioner in alleged first sale in the series of sales, which is found to be suspicious and bogus, is presumed without there being any justifiable reason available on record. Thus, on the facts and in the circumstances of the case, in the considered opinion of this court, without considering the submissions of the petitioner and the material placed on record in their entirety and objectivity, the finding recorded by the Assessing Authority discarding the purchase transactions in question as not genuine, is not sustainable in the eyes of law.

10. In view of the discussion above, the writ petition is allowed. The impugned assessment order dated 28.3.13 is set aside. The matter shall stand remanded to the Assessing Authority to pass the assessment order afresh, after due inquiry regarding the genuineness of the purchase transactions in question. Needless to say that the Assessing Authority shall pass a speaking order after giving an opportunity of hearing to the petitioner in accordance with law. No order as to costs.