(2015) 03 TP CK 0032

In the Tripura High Court

Case No : Writ Petition(C) No. 510 of 2014

Shyam''s Electrolyte APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:
Tripura Value Added Tax Act, 2004 — Section 67

Citation : (2016) 89 VST 205

Hon'ble Judges : Deepak Gupta, C.J.;Utpalendu Bikas Saha, J.

Bench : Division Bench

Advocate : B.N. Majumder, for the Appellant; D.C. Nath, State Counsel, Advocates for the Respondent

Judgement

Deepak Gupta, C.J.—The petitioner by means of this petition has challenged the action of the respondents in seizing his goods on the ground of undervaluation of goods.

2. The undisputed facts are that the petitioner is a dealer dealing with sale of UPS. It is also not disputed that he is a registered dealer under the Central Sales Tax Act.

3. According to the petitioner, he purchased 62 numbers of two different varieties of Luminous Electra UPSs from Luminous Power Technologies Private Limited at Guwahati. He had purchased these goods for further sale in the State of Tripura. He had paid 2% CST on the value of the goods as reflected in the invoice.

4. When the goods were being transported they were seized by the Officer-in-Charge of the Churaibari Check Post on 16.04.2013. The ground for seizure is that the Maximum Retail Price (MRP) shown on the box of each UPS was Rs. 8,290/- and according to the Officer-in-Charge of the Churaibari Check Post, these goods had been undervalued by showing them to be of the value of Rs. 3873.37 each. The transporter who was carrying the goods on behalf of the petitioner, filed a revision petition before the Commissioner of Taxes and the said

Commissioner held that since the petitioner had declared only 46.78% of the MRP as purchase price and on market survey it transpired that the sale rate was Rs. 5,800/- against MRP of Rs. 7,490/- in some cases of same quality Microtec UPS, therefore, against MRP of Rs. 8,290/- the purchase price of Rs. 3,873.37 is unjustified. Thereafter, rectification petition was filed which was also turned down and hence the present petition.

5. This Court has repeatedly held that the maximum retail price by itself cannot be the guideline to determine the value of the goods. In many cases the maximum retail price is inflated and goods are sold at less than the said price. It is the duty of the assessing officer to determine the value of the goods. He can do so on the basis of comparison with similar goods sold in the market. In the case like the present one where the petitioner himself is dealing with Luminous UPS products his record book prior to and after the seizure can also be checked to verify at which price the petitioner is selling these goods.

6. One must remember that what is the margin of profit depends on the facts and circumstances of each case. There are many expenses other than transportation and tax which have to be taken into consideration. A dealer of computer goods may be maintaining a big showroom with lots of staff. The rent of the showroom and the salary of the staff are all aspects which have to be taken into consideration. The books of account of the petitioner can be easily verified to find out what is the price at which he sells these or similar goods. Comparison can also be made with other dealers selling UPS in the market.

7. In the present case, a market survey is stated to have been done. This market survey was done at the back of the petitioner. No evidence can be collected against back of a party. If any market survey is to be done then those people must file their evidence in affidavit or the market survey report should be made available to the petitioner. This Court in M/s. Ruchi Soya Industries Ltd. Vs. State of Tripura, CRP No. 76 of 2009 with regard to the powers under Section 67 of the Tripura Value Added Tax Act, 2004 has held as follows:

"13. The Act empowers the officer to take two actions. The first action is, to direct the driver or person in-charge of the vehicle not to part with the goods, in any manner, till verification is done or an inquiry is made. Therefore, if the officer-in-charge of the check post has some doubt with regard to the value of the goods, he should preferably follow the first rule. Seizure of the goods is a penal action and normally seizure should only be done where the goods are not accompanied by any document or the documents on the face of it are forged. Where the only difference is with regard to the value of the goods, the officer should not normally seize the goods but should direct the driver or the person in-charge not to sell them till verification of the price is made. In many cases like the present case, where the registered dealers are transporting the goods, it may not be necessary to seize the goods. The value of the goods can be noted down and the goods can be handed over to the driver or the person-in-charge of the vehicle under a surety bond that after they are taken to the destination they shall be produced before the concerned taxation officer. The seizure of goods should be the last resort and not the first action to be taken by the officer-in-charge of the check post. In the present case action of seizure was based on no evidence and is totally illegal." 8. As far as the present case is concerned, the goods have been lying seized for more than a year. We do not know what will be the condition of the goods at this stage. Till date neither the assessing authority nor the revisional authority has made any demand of tax from the petitioner. We, therefore, dispose of the petition with the following directions.

(i) That, within one week from today the respondents shall ensure that the UPSs which were seized on 16.04.2013 are released in favour of the petitioner on his furnishing a surety bond in the sum of Rs. 1,00,000/- to the satisfaction of the Assessing Officer giving an undertaking to pay this amount in case the Assessing Officer comes to a finding that the goods are grossly undervalued.

(ii) The Commissioner of Taxes shall supply a copy of the market survey report to the petitioner and shall give the petitioner as well as the Revenue (Taxation Department) an opportunity to lead evidence or produce other material before him to show what was the price of such UPSs in the wholesale market at the relevant time.

9. In this view of the matter, the petition is allowed. The order of the learned Commissioner is set aside. The matter is remanded to him to decide the value of the UPSs. He is directed to dispose of the matter as early as possible, and in any event not later than 30th September, 2015.