(2008) 02 RAJ CK 0042

In the Rajasthan High Court

Soma-BSCPL, JV APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 77

Citation : (2008) 2 RLW 1736

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—By this writ petition, the petitioner is challenging the order/direction dated 04.12.2007 (Annex.-P/13, P/14) and order/direction dated 01.12.2007 (Annex.-P/15). It is further prayed by the petitioner that actions, conducts and functionings of respondent No. 5 contractor may be held illegal, unjust and unconstitutional in collection of tax from the registered dealer (like the petitioner) and in insistence of submission of copy of VAT invoice/invoice. The petitioner has also prayed that tax collected illegally so far by respondent No. 5 contractor from the petitioner may be ordered to be deposited immediately with the respondent department of Commercial Taxes and the same may be ordered to be adjusted from the ultimate tax liability of the petitioner.

The facts narrated in the writ petition are that the petitioner is a joint venture created by two companies viz., SOMA Enterprise Ltd. and B. Seenaiah Company Ltd, both registered under the provisions of the Companies Act, 1956. The petitioner is involved in construction of roads under the contract awarded by the National Highway Authority of India (in short, hereinafter "the NHAI") and, at present, the petitioner has undertaken the work of construction of "4 way lane" between the village Bakeria (District Udaipur) to village Gogunda (District Udaipur. Respondent No. 3 awarded a contract to respondent No. 5 under the contract-agreement dated 20.10.2007 for tax collection from unregistered dealers only on the sale of some material like Gitti (blast), morrum, khanda, rubble, etc. As per the petitioner, respondent No. 5 is illegally impeding the vehicles of the petitioner knowing it well that the petitioner is registered dealer and as per terms of the contract-agreement, respondent No. 5 is not at all entitled to collect tax from registered dealers because admittedly all the registered dealers are always assessed separately by way of framing the annual/ quarterly assessments independently.

2. The petitioner has placed on record Annex.-P/1, Annex.-P/2 and Annex.-P/3 in respect of registration certificates issued in its favour under the Central Sales Tax Act, 1956, Rajasthan Sales Tax Act, 1994 and Rajasthan Entry Tax Act, 1999, respectively.

The petitioner was awarded contract by the NHAI for construction of 4-way lane in the name of ''Rehabilitation and Upgradation of Bakeria to Gogunda Section'' of the National Highway No. 76 and the period fixed under the said work contract agreement is 30 months. The date of commencement of the work contract was 06.11.2005 and said work is to be completed anyhow on or before 05.05.2008. As per the petitioner, respondent No. 5 was awarded contract for collector of tax by the respondent Department and, as per condition No. 17, the contractor has been restrained from collecting tax from any registered dealer. Condition No. 17 of the contract-agreement entered into by respondent No. 5 with the Commercial Taxes Department for collection of tax, placed on record as Annex.-10, reads as follows:

The Contractor shall not collect tax from any registered dealer or on any other item other those specified in this contract. Moreover, he shall not collect any amount by way of fee, service charge, case or any other than those specified in this contract. Moreover, he shall not collect any amount by way of fee, service charge, case or any other amount by whatsoever name called except the tax amount. Any unauthorized collection shall be treated as breach of condition of the of contract.

3. According to the petitioner, the petitioner is a registered dealer and executing me work of construction of road, therefore, respondent No. 5 cannot collect any tax from petitioner firm because the petitioner firm is registered dealer. However, on coming into effect of the Rajasthan Value Added Tax Act, 2003, the petitioner submitted an application for giant of exemption certificate before respondent No. 3 and, in turn, exemption certificate was granted on 26.09.2006. As per the petitioner, for the purpose of undertaking the work of construction of the road the petitioner has been excavating the required items from mines and quarries belonging to certain owners. The required documentation so far as permission of such excavation has already been entered into between the respective mine owners and the petitioner is doing the work of excavation of the material absolutely in legal manner. It is submitted that the petitioner was also issued short-term permits on 04.12.2006, 06.12.2006, 02.02.2007 and 27.08.2007. The said STPs were granted by the Department of Mines under the Rajasthan Minor Mineral Concession Rules, 1956.

According to the petitioner, the main controversy is that under the Rajasthan VAT Act, 2003, vide Section 77, it has been provided for establishment of check-posts on contract basis. The provision empowers the State Government to award contract for collection of tax to private contractors on certain conditions.

4. The Commercial Taxation Department vide agreement dated 20.10.2007 awarded the contract of tax collection on the checkpost from unregistered dealers conditionally to respondent No. 5 contractor. It is stated that being a registered dealer the petitioner is not required to pay any tax to the contractor nor the contractor can collect any tax from the petitioner dealer as per condition No. 17 of the contract. The respondent No. 5 was granted contract for one year to collect tax on certain items and the rate of tax was also specified while issuing the notification. The said notification was issued on 20.09.2007 and further it was amended on 20.11.2007. The main contention of the petitioner is that as per contract of collecting tax given to respondent No. 5 by the respondent Department, he could collect tax from unregistered dealers only. The petitioner itself being a registered dealer is not required to give any tax nor it can be levied by respondent No. 5 because the petitioner is assessed separately and independently by the assessing authority. It is also submitted by the petitioner that for the purpose of construction, he is excavating the material from those mines and quarries which are as such owned throughout by the petitioner only and he is using the material for construction and not selling the same. Therefore, according to the petitioner, upto the time of using those minerals and items for the purpose of construction of the road/NH 4-lane by the petitioner, those items do not undergo any kind of sale whatsoever.

5. The petitioner was shocked when a communication was issued by respondent No. 3 on 04.12.2007 by which it was conveyed that registered dealers (like the petitioner) have been bound to submit the copies of VAT invoice/invoice to the check-post contractor when the vehicles are passing through. When this communication was received by the petitioner he made enquiry and came to learn that vide communication dated 01.12.2007 respondent No. 4 instructed respondent No. 5 contractor that in pursuance of communication dated 27.11.2007 of the Head Office, on the check-posts, he has to get the copies of VAT invoice/invoice from the registered dealers and, in turn, the same were to be submitted to the Department by him.

It is contended by learned Counsel for the petitioner that surprisingly enough when contract was awarded to respondent No. 5 for collecting tax in which it is specifically provided that no tax shall be collected from the registered dealers but, in contravention of the said condition, impugned notice/communication dated 04.12.2007 and 01.12.2007 were issued by the Department. Hence a detailed representation was filed by the petitioner on 11.12.2007 and it is brought to the notice of the assessing authority that the petitioner has undertaken work of construction of national highway, therefore the condition of issuance of VAT invoice/invoice is against the provisions of the Act.

6. It is further contended by learned Counsel for the petitioner that there is no question of issuance of VAT invoice/invoice because the goods which is used for the purpose of construction of the national highway the petitioner is excavating the material from his mines under STPs, therefore, there is no occasion for issuance of VAT invoice/invoice because the same can be issued only in the event of purchase of goods by the petitioner from other person. Learned Counsel for the petitioner submits that when short-term permits are issued in favour of the petitioner he remains the owner of the goods and, therefore, the impugned orders/directions cannot be issued in view of the order dated 14.10.2002 passed by the Addl. Commissioner, Commercial Taxes Department, in which in the matter of KMC Constructions Ltd. and M/s Waghar Constructions, it was held that the contractor is not authorized to collect tax at the check post from registered dealer like the petitioner. Therefore, the contractor has been committing illegality by detaining the vehicles of the petitioner on the ground that the petitioner must submit VAT invoice/invoice and the functioning of the contractor is contrary to the scope of the contract of tax collection awarded in favour of respondent No. 5.

It is submitted by learned Counsel for the petitioner that again a detailed representation was filed by the petitioner on 13.12.2007 but respondent No. 5 is illegally detaining the petitioner''s trucks and harassing the vehicle drivers and misbehaving with them, therefore, the work of the construction of 4-lane national highway road is being frustrated and the respondent No. 5 is illegally collecting the tax from the vehicles, therefore, it is prayed that it should be stopped. The petitioner is repeatedly filing representations high-lighting the entire position that respondent No. 5 is collecting tax illegally but the respondents have not given any heed to the petitioner''s prayer for restraining respondent No. 5.

7. During the course of arguments, learned Counsel for the petitioner also prayed that the petitioner is ready to furnish delivery challan mentioning his TIN registration number, truck number in which the goods are transported and, so also, quantity of the goods, declaring in the delivery challan that goods have been excavated by the petitioner under the shortterm permit issued to the petitioner by the Mining Department.

8. While submitting so, it is argued by learned Counsel for the petitioner that upon aforesaid facts and circumstances of the case, the petitioner who is registered dealer is not required to pay any tax nor respondent No. 5 can collect any tax from the petitioner as per condition No. 17 of the contract for collecting tax in which it is specifically provided that no tax shall be collected from the registered dealers.

As per learned Counsel for the petitioner, despite the legal position decided earlier by the Commissioner, respondent No. 5 is illegally disturbing the petitioner knowing it well that the petitioner is registered dealer and he is not required to pay any tax. As per the petitioner, the condition of submitting VAT invoice/invoice is absolutely illegal as there is no sale throughout on its part and the issuance of the STPs in favour of the petitioner itself bears ample proof of supply of the material from the mines/quarries to the site of the road construction; but, in the garb of collection of tax respondent No. 5 cannot at all be permitted to harass the petitioner, however, while misinterpreting the order/ direction dated 04.12.2007 and 01.12.2007 respondent No. 5 is illegally disturbing and collecting tax.

9. Per contra, learned Counsel for respondent No. 4 Shri Vineet Kumar Mathur submitted that the petitioner cannot be permitted to make a transfer of goods without any documents whatever accompanying the said goods. As per the respondents, the petitioner is transferring goods from the mines to the place of execution of the work contract and he is required to show the documents of such material and, so also, he is required to satisfy the contractor that he has not purchased the goods and directly after excavation sending for execution of the work. According to learned Counsel for respondents No. 1 to 4, respondent No. 5 is required to verify each goods vehicle which crosses the checkpost and it is also required by the petitioner to satisfy respondent No. 5 with proper documents accompanying the goods to make the position and status of such goods clear. The petitioner is somehow not showing the documents for transporting the goods, therefore, communications dated 01.12.2007 and 04.12.2007 were issued to prevent tax evasion practice. It is contended on behalf of respondents No. 1 to 4 that the petitioner cannot be permitted to evade tax liability and only requirements put by the department in the said communications is that the petitioner shall satisfy the check-post of respondent No. 5 that the goods which is being transported in the vehicle through check-post is belonging to the petitioner who is registered dealer and that he has not purchased the said goods. The petitioner is also required to produce the ''ravanna'' slip which is required to be issued by the Mining Department. As per the respondents, the petitioner has also failed to show compliance of condition No. 3 of the STPs granted to him for the purpose of excavating minerals.

10. Thus the petitioner himself is liable to pay tax upon failure to prove with documents I and the petitioner is liable to pay tax. It is further submitted that the petitioner has not categorically stated that all the excavated mineral is being used in execution of the contract work and the material used is being absolutely excavated from the mines and quarries in whose respect the STPs are issued by the Mining Department. It is true that if the petitioner is carrying excavated minerals from STPs then he is not liable to pay tax; but, at the same time, while carrying the said material some sort of documents which is required as proof must be produced and upon failure to do so the petitioner is liable to pay tax and respondent No. 5 who has been given contract can collect tax from him. In the garb of execution of the 4-lane highway road the petitioner registered dealer cannot be allowed to carry the goods which is not excavated minerals from the mines and quarries under the STPs.

11. As per the respondents, the explanation to Sub-section (1) of Section 77

specifically provides for carrying of goods being sold to the user. As per notification dated 11.08.2006 under which the petitioner has been exempted from payment of tax on transfer of goods, that is, transfer of goods from the petitioner to NHAI, it nowhere exempts the petitioner from his liability of tax on purchased goods or carrying of excavated mineral. During the course of arguments, learned Counsel for the respondents No. 1 to 4 vehemently contended that in the matter of revenue collection the State Government cannot allow anybody to evade the tax liability on illegal premises. When the contract for tax collection under the VAT Act of 2003 is given to respondent No. 5, then, he is required to collect tax after satisfying that the incumbent is liable to pay tax.

12. Therefore, the petitioner has unnecessarily filed this writ petition and seeking interference by this Court because the option is left to the petitioner to fulfill the requirement of law and satisfy the contractor that he is not liable to pay any tax. Learned Counsel for the respondent No. 5 also vehemently urged that when the contract is given to respondent No. 5 for collection of tax, then, it is his duty to collect tax in accordance with provisions of law. It is true that as per condition No. 17 of the contract, no tax can be collected from registered dealer but, at the same time, the registered dealer is also under obligation to satisfy the contractor that he is carrying the goods directly and has not purchased the goods meant to be used for the purpose of construction of 4-lane highway road.

13. The respondent No. 5 has acted in accordance with direction issued by the department on 01.12.2007 and 04.12.2007 whereby he has been directed by the Commercial Taxes Department and complying with the directions that copy of VAT invoice/invoice is required to be given at the check-post when goods are being transported through the check-post.

I have considered the rival submissions and perused the entire material on record.

In this case, it is true that as per condition No. 17 of the contract given to respondent No. 5 by the Commercial Taxes Department, he cannot collect tax from the registered dealer; but, he has been authorized to collect tax from other unregistered dealers. Respondent No. 5 is obeying the communications dated 04.12.2007 as well as 01.12.2007 issued by the Commercial Taxes Department, which read as under:

mijksDr fo"k;kUrZxr izklafxd i= }kjk O;olkf;;ks tks ekcZy ,oa xzsukbV dks NksM+dj fcfYMax LVksu ds vkbZVe rFkk [k.Mk ?jCcy? fxVVh ?cSykLV? ,oa eksje dk ifjogfur djrs gS] eq[;ky; ls izkIr i= dzekad i-2@mik@,bZ@lhih@mn;iqj@pstk iRFkj@2007&2008@236 fnukad 27-11-2007 ls izkIr funsZ''kks dh ikyuk esa mugs ikcan djs gsrq fy[kk gS fd muds }kjk tkjh osV bUokbl@bUokbl dh ,d izfr Bsdsnkj }kjk lapkfyr pSd iksLV ij nsos A

vr% vkidks funsZf''kr fd;k tkrk gS fd vki }kjk tkjh osV bUokbl@bUokbl dh ,d izfr mDr eky dks ifjogfur djrs le; Bsdsnkj }kjk lapkfyr pSd iksLV ij nsosA mi;qZDr fo"k;kUrxZr izklafxd i= ds dze esa Jheku vfrfjDr vk;qDr ?izfrdjkioapu? okf.kfT;d dj] t;iqj ds funsZ''kkuqlkj vkidks vkns''k fn;s tkrs gS fd vuqcU/k vuqlkj ekoyh rglhy dks NksM+dj jktLo ftyk mn;iqj ds fofufnZ"V {ks= jktLo ftyk mn;iqj dh rglhyks esa ekcZy ,oa xzsukbV dks NksM+dj fcfYM+ax LVksu ds vkbZVe ;Fkk [k.Mk ?jCcy?] fxVVh ?cSykLV? ,oa eksje ij dj laxzg.k gsrq vf/klwfpr pSdiksLVksa ls ifjogfur iathd`r O;olkf;;ksa ds okgu pkyd@izHkkjh ls eky dk osV bUokbl@bUokbl dh izfr izkIr djsxs ,oa mUgs ,df=r dj vxys dk;Z fnol esa dk;kZy; okf.kfT;d dj vf/kdkjh o`- r c] mn;iqj esa izLrqr djsxs A osV bUokbl@bUokbl vfuok;Z :i ls fnukad ,oa O;olk;hokbt lwph cukdj gh dk;Zky; esa tek djkosa A

fcy laxzg.k dh mi;qZDr O;oLFkk rRdky izHkko ls izHkkoh gksxh

14. Upon perusal of the above two documents, it is clearly revealed that after applicability of the VAT in the State of Rajasthan if any person is purchasing any goods irrespective of the fact that he is registered dealer or unregistered dealer VAT invoice or invoice is required to be issued by the seller and in that event the said invoice is to be submitted before the check-post of respondent No. 5 who is authorized contractor of the Commercial Taxes Department, therefore, these orders have been issued for the purpose of monitoring that in the garb of condition No. 17 no registered dealer can evade the liability of tax. The purpose of issuing Annex.-15 dated 1.12.2007 and Annex.-13 dated 4.12.2007 is for the purpose of satisfying that the good which is being transported by the registered dealer is not purchased from any other agency. If it is purchased then, of course, he is required to submit the VAT invoice/invoice which is mandatory to be issued by the seller of the goods.

The question of asking the petitioner to submit ''ravanna'' slip in the face of STPs is improper but, at the same time, the petitioner has to satisfy the check-post of respondent No. 5 contractor that the goods transported in the vehicle Is not purchased by him and for that purpose the petitioner has submitted that he is ready to furnish the delivery challan, mentioning his TIN registration number, truck number in which the goods are transported and so also quantity of goods declaring in the delivery challan that the goods have been excavated by the petitioner under the STPs issued by the Mining Department. When the petitioner is ready to submit all these things, in my opinion, asking the petitioner to subject ''ravanna'' slip is totally Improper.

From perusal of communications dated 4.12.2007 and 1.12.2007, it is re-Veiled that in both these communications it is nowhere directed by the Department that the petitioner dealer shall submit ''ravanna'' slip before the check-post. The only requirement of these letters is that in the event of purchase of goods the petitioner has to submit VAT invoice/invoice at the check-post of the contractor. It is nowhere stated by the respondent Department that the contractor shall ask the registered dealer to file ''ravanna'' slip.

16. Therefore, in my opinion, the petitioner''s submission that he will furnish the delivery challan mentioning his TIN registration number, truck registration

number and so also quantity of goods, declaring in the delivery challan that the goods have been excavated by the petitioner under the STPs issued by the Mining Department and this is sufficient for satisfaction of the contractor tax collector. The contractor also cannot impose the self-condition for submitting the ''ravanna'' slip because it is nowhere directed by the respondent Department vide Annex.-13 dated 04.12.2007 and Annex.-15 dated 01.12.2007.

I am also inclined to agree with the petitioner''s submission that the Commissioner has decided similar controversy vide judgment dated 14.10.2002 (Annex.-23) in the matter of KMC Constructions Ltd. in which it was held that the contractor is not authorized or entitled to collect the tax at the check-post from registered dealers. In these circumstances, I deem it just and proper to direct the respondent Department to issue order to the contractor respondent No. 5 forthwith that in the event of furnishing the delivery challan mentioning his TIN registration number, truck registration number and so also quantity of goods, declaring in the delivery challan that the goods have been excavated by the petitioner under the STPs issued by the Mining Department, the vehicles of the petitioner shall be allowed to pass through the check-post and the contractor respondent No. 5 shall not insist upon the petitioner registered dealer to file ''ravanna'' in respect of goods excavated and carried for the work under the STPs.

17. The respondent Department is, however, always free to take action against the petitioner if any information furnished by the petitioner, as mentioned above, is found to be wrong and to levy tax and take action to penalize him.

With aforesaid directions, the writ petition is disposed of.

