(2001) 07 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2020-23 of 2001

U.O.I. and Another APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 4 RLW 1991 : (2003) 1 WLN 644

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Bharat Vyas, for the Appellant; G.S. Bafna, for the Respondent

Judgement

Keshote, J.—These four petitions are not only identical but the parties are also commonnd therein the identical point of law for consideration of this Court has been raised. These matters in fact and substance are identical as these four writ petition are against assessments of sales tax made for four different assessment years. Hence, these four petitions are taken up for hearing together and are being disposed of by this common order.

2. For the disposal of these matters, the facts and the grounds raised to challenge the assessment orders of the sales tax passed by respondent No. 3 are taken from the writ petition No.2020/2001.

3. The petitioners to carry out enormous construction works in connection with the developmental works carried out by the Ministry of Defence throughout the State of Rajasthan, they have to undertake the construction work of buildings for housing, offices and the residential accommodations of their officers and staff besides other defence work. In order to get these works done, the petitioners award contracts to various contractors and also supply to them building materials such as cement and steel. The petitioners purchase cement and steel from various reputed concerns not only within the State of Rajasthan but also from outside the State. The petitioners state that they are to pay to the sellers of such

materials, sales lax leviable on such sales apart from the actual price of the goods sold. So far as the purchase of building materials within the State is concerned, the petitioners pay to the sellers thereof the sales tax on the value of such building materials within the meaning of the Rajasthan Sales Tax Act, 1994 (hereinafter referred as "the act of 1994"). The purchase of goods from outside the State of Rajasthan falls within the ambit of inter-state trade and commerce, the non- petitioners are not authorised to levy sales tax on the purchase of such goods as provided under Article 301 of the Constitution of India. This way and the manner the petitioners are purchasing the building materials namely cement and steel from various suppliers/sellers within and outside the State of Rajasthan and in order to get the constructions works undertaken through their contractors and supplying these goods to these contractors. The price of the goods so supplied to the contractors are completely adjusted in the final bill of the contractors and the contractors are paid the total construction value minus the price of the building materials supplied to them. The petitioners are also deducting from the final bill of the contractors sales tax as per the prescribed rate and same is deposited with the Sales tax Department. It is the case of the petitioners that they are not required under the law to get themselves registered with the non- petitioners as dealer within the meaning of Section 2(14) of the Act of 1994. The fact that the petitioners are making purchase of goods from various suppliers/sellers and making such goods available to their contractors is informed to the non-petitioners vide their letter dated 16.3.2001. The reference has also been made to the conditions No. 10 of IAWF-2249, General Conditions of contract that after issue of the building materials to the contractors under Schedule ''B'' the materials shall be under joint custody of the petitioners and contractor with double lock arrangement and the contractor is bound to use the cement in the particular work for which the same are issued as per the directions of the Engineer incharge. The position of cement consumed and stock available is being daily submitted by the contractor to the Department. Since the consumption of Schedule ''B'' stores for other purposes is not permitted and for any misuses or even excess consumption of Schedule ''b'' materials in the work, the contractor is liable to return the excess issued/consumed quantity to the department failing which the recovery at the rate of double market price as per contract conditions is being effected from his payment. The materials included in the Schedule and which are required to be supplied by the petitioners to the contractor for execution of the Government work are supplied to the contractor for a fixed price which is settled before the execution of the contract between them. The price of such goods do not vary on the basis of actual market rate prevailing on the date the material are supplied to the contractor. The petitioners submitted again that the cost of the Schedule material supplied to the contractor are adjusted from the bills of the contractor but the ownership of such goods supplied never change hands and always remains with the department. The reference has been made to the fact that the value of the work includes inter alia the cost of the stores included in the schedule incorporated in the works done by the contractor. The contractor is not required to purchase this material from the

Government on the prevailing market rate. So what it is submitted that the event of sale never took place between the Government and the contractor with regard to the Schedule material supplied by the petitioner to the contractor. The petitioner then made reference to Article 285 of the Constitution and submits that under this provision the property belonging to the Union exempts from payment of tax by the State Government. The Schedule ''B'' stores is a property belonging to the Union, it is exempted from levy of tax at the hands of State Government in view of Article 285 of the Constitution of India and no demand for tax can be raised by the Commercial Taxes Officer of the State against the property belonging to the Union and any such demand is wholly unconstitutional, ultra vires and violative of Article 285 of the Constitution of India.

4. Respondent No. 3 issued a notice dated 25.1.2001 calling upon the petitioner to give details of the cement supplied to the contractors. This pertains to the period from 1997-98 to December, 2000. The petitioner vide letter dated 19.2.2001 objected this action of respondent No. 3 on the ground that the cement is used for the defence work only and remains in the joint custody of department and contractor and even if it is issued to the contractors it is exempted for payment of any kind of tax. In response to that letter the representative of the petitioner appeared before respondent No. 3 and pleaded that no tax can be levied on the property belonging to the Union and any levy of the tax on the property belonging to the Union is without any authority of law and violative of Article 285 of the Constitution. The respondent No. 3 issued a notice Under Section77(1) of the Rajasthan Sales tax Act to the petitioners calling upon them to appear before him with necessary information with regard to the purchase of cement made by the department for the year 2000- 2001: In response to that notice, the petitioners furnished the necessary details with regard to the purchase of cement in the year 1997-98, 1998-99, 1999-2000 and 2000-2001. Respondent No.3 called upon the petitioners for finalisation of the assessment of the sales tax on 18.1.2001. The petitioner''s representative appeared before respondent No.3 and submitted the detailed representation reiterating therein the request that the tax cannot be assessed against the petitioner for the said years. Again on 23.3.2001 the representative of the petitioner appeared before respondent No. 3 and submitted a clarification that there is no sale of cement to the contractors by anyone and no question does arise for demand of payment of sales tax on this material. It is in the grievance of the petitioner that on 23.3.2001 though the representative of the petitioner was present but the order of the assessment of the tax was passed by respondent No.3 either on 23.3.2001 or even on any date after 23.3.2001. This order appears to have been made after 23.3,2001 but it was of ante-dated i.e. 19.3.2001. Under the said order, respondent No.3 has assessed an amount of Rs. 5,64,733/- as tax. On this fact, 200% penalty was imposed which comes to Rs. 11,29,446/- and a further sum of Rs. 90,357/- as interest thereon and thus total amount assessed to a sum of Rs. 17,84,556/-. Hence these petitions.

5. In view of the order which I propose to pass in these matter I do not consider

it to be appropriate, desirable and necessary to go on and decide the points raised in the petition on merits of the case. However, I cannot restrain myself from expressing my prima facie opinion that the way in which the officers of the sales tax department proceeded in the matter certainly speak of one thing that they are not acting fairly, impartially and honestly in the matter. The manner and the way in which the penalty and the interest demands are created certainly speak of one thing that this is one way to complete he targets of the revenue collection fixed for the financial year 2000-2001. The Commercial Taxes Officer has acted in a manner which though nothing can be said finally at this stage is not fair and reasonable. He knows well and would have known that this a matter concerned to the supply of Schedule ''B'' material to the contractor by the defence personnel for the defence works and even if he was of the opinion that it is a matter of sale of material by the Union of India, how for he was justified to impose this heavy penalty and charge interest also. He has dealt with the Union of India in the manner worst than what he deals with ordinary assessee under the Sales Tax Act. There are serious voices and complaints from different corners of corruption against the officers of the sales tax department. However, these complaints are correct is not a matter for inquiry by this Court nor this Court is concerned with it, but if we go by this assessment orders made by respondent No. 3 in these cases prima facie it appears to be an attempt on the part of this officer this way to create the heavy demand of tax and make all attempt to recover same so that possibly there may no need to come heavily on the other assesses. If it is the consideration and approach though nothing can be said finally certainly than what the persons are complaining against the officers of the department may be correct to certain percentage.

6. Be that as it may be from the facts of this petition it is clear that the dispute is between the Union of India through the Ministry of Defence and the State of Rajasthan through the Finance Secretary regarding the sales tax assessment, demand and recovery. It is in the case of the Union of India that supply of the cement Schedule ''B'' material to the contractors by it is not a sale and on tax is payable thereon. On the other hand it is the case of the Govt. of Rajasthan that it is a sale of the material and sales tax is leviable thereon. The Union of India is also put in defence Article 285 of the Constitution and submitted that under that article no tax on the property belonging to the Union of India is leviable. Who is correct is not a matter for consideration of this Court at this stage. When a dispute arises between the Union of India on one hand and the Govt. of a State on other hand whether it is to be permitted to one party to bring it directly to the court or first it has to be considered at the Government level so that unnecessary litigation may not come before the Court and the Union of India and the State Government may not indulge in an avoidable litigation in court and further save money to be spent for fees of counsel, Court fees, process fees and above that save public time. In the case of Oil and Natural Gas commission & Anr. v. Collector of Central Excise, their Lordships of the Supreme court directed the Government of India therein to set up a committee consisting the representative

from the concerned Ministry and other departments to ensure that no litigant comes to the Court or the Tribunal in between the public undertakings of Central Government or Union of India without the matter having been first examined by the committee and its clearance for litigation. The Hon''ble Supreme Court has further observed that it shall be the obligation of the every Court and the Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance the proceedings would not be proceed with. The Hon''ble Supreme court has observed that the committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. The Court has expected a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1st January, 1992.

7. Here the dispute is between the Union of India and the Govt. of Rajasthan. It was not made known to the Court nor it is the case of either of the parties to the litigation that on the line of the guidelines given by their Lordships of the Supreme Court in the case of M/s. Oil and Natural Gas Commission v. Collector of Central Excise (supra) any Committee for clearance of the litigation between this class of litigations has been constituted or not. But from these writ petitions, it can reasonably be inferred that the Govt. of Rajasthan has not constituted any such Committee for if any such Committee is constituted either is a defunct Committee or nobody bothers to work and proceed in the spirit what it is desired by the Supreme Court in the decision in case of M/s. Oil and Natural Gas Commission v. Collector of Central Excise (supra). From the judgment of the Supreme Court in case of Oil and Natural Gas Commission v. Collector of Central Excise (supra) I find that the Court has given direction on 11.9.1991 to the Cabinet Secretary regarding the settlement of dispute between the parties in that case and that dispute has been settled. The report of the Cabinet Secretary submitted to the Court reads as under: -

"1 would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, Court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

8. In view of this report their Lordship of the Supreme court has directed to the Government of India to set up a Committee as indicated therein. The Union of India and the State Government should not bring the litigation in the Court by spending money on the fees of the counsel, Court fees, procedural expenses and

wasting the public time. It is the peoples money and time. Not only this, the Govt. of Rajasthan is the biggest litigant in the State. Similarly, is the case of Union of India, it has also a good litigation in the Courts. If they themselves are fighting in the Court on their disputes then it will result in increasing the work of the Court as well as unnecessary expenses of the peoples money on fees of counsel, Court fees, procedural expenses and wasting public time. If we go by the facts of these petitions it can safety be inferred that a good amount of the money would have been spent both by the Union of India and Govt. of Rajasthan in payment of the fees of their counsel, Court fees and procedural expenses. Leaving apart these expenses, the Officers of both the Union and State would have consumed a considerable and substantial public time for the preparation of these matters. Otherwise also, it is not in the larger interest of the public that the Union of India and Govt. of Rajasthan fight for their dispute in the Court. It may be bad massage to the public. Not only this it also gives a message that there is no co-operation, understanding and system for resolving the inter se dispute between the Union of India and the State of Rajasthan. Not only this, it gives a bad name both to the Union of India and the Govt. of Rajasthan amongst the peoples that when these two are not in a position to resolve their disputes how it can be expected from them that they will in a position to administer the law, maintain the dignity of the rule of law, to maintain the law and order and to work together and proceed for the welfare of the citizens as well as for the development of the country. I do not mean or suggest that there may not be any dispute between the Union of India and Govt. of Rajasthan. Looking to the constitutional provisions as well as different State and Central Acts and further that the Union of India and the Government of Rajasthan also to certain extent carrying on the commercial and trading activities there are all the possibility of arising of the disputes between these two persons. The dispute which arises between the parties in these matters possibly may be there. It is a matter of levy of sales tax by the Union of India and the approach of the State of Rajasthan may be correct and ultimately the Union of India may be held liable for the payment of this tax on the supplies of this Schedule ''B'' material to the contractors. But for resolving this dispute the action of Union of India directly come to the Court is difficult to appreciate what to say to accept it. The Union of India should have taken this matter with the State of Rajasthan at the Ministry level rather than to feel satisfy to approach to respondent No. 3. Respondent No. 3 is the the lowest officer in the ladder in the system. He is the assessing officer of tax and he would have given the notice to the petitioners. Immediately on receipt of the notice from respondent No. 3 the Union of India through the Ministry of Defence should have taken up this matter at the high level in the Slate but this has not been done. That goes to show that its officers are either interested in litigation or they are wholly negligent, carelessness and unmindful of their duties which they owe to their employer and the public. In the writ petition even there is no whisper that the officers of the Union of India unfortunately an impersonal machinery has approached to the Secretary or the commissioner of the department. This approach of the offices of the Union of

India deserves to be deprecated. If they would have proceeded in the direction which is expected from them and this litigation possibly would not have been before this court. That way if the matter would have and should have been taken it would have served three fold purposes. One is no unnecessary work before the respondent No. 3, second no litigation before this Court which is already facing serious problem how to over come this maintaining pendency of cases and thirdly the Union of India and the State of Rajasthan would have saved the public money as well as the time, it is not the first case between Union of India of Govt. of Rajasthan which has come up before this Court. The cases after cases in between the Union of India and the State or State v. public undertakings or inter-departments are coming up in the Courts. Looking to this quantum of the work regarding the disputes in between these classes of the litigants I am of the the opinion that if it has already been not done the State of Rajasthan to constitute a high level Committee to ensure that no litigation between these classes of litigants comes to the Court or the Tribunal without the matter having first been examined by the committee and its clearance for litigation. In case of M/s. Oil and Natural Gas Commission v. Collector of Central Excise (supra), their Lordships of the Supreme Court have observed that senior officers only should be nominated so that the committee would function with status, control and discipline. Their Lordships of the Supreme Court further observed that the Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. Looking to the heavy pendency of cases and increasing graph of the litigation in the courts and the Tribunals, it is a high time where State of Rajasthan has to consider and find out the ways and system so that the dispute between this two classes of the persons may not come to the Court. It is also to find out the way and system so that avoidable litigation may not come up in the Courts or the Tribunals.

It is unfortunate that the State of Rajasthan is not looking and considering this aspect in its correct perspective. Though it is highlighted in the newspapers re-its good work and administrative reform which the Government did and doing but in practice and reality it is otherwise, I cannot resist myself to observe that there is nothing substantially come out from the Government on this point. I may give here example of the dispute in the service matters which are coming up every day before this Court, Court subordinate to it and Tribunal. In the Court a substantial percentage of the litigation is of this category. In most of the cases the employees and the officers of the Govt. of Rajasthan are coming up before the Court only after giving a representation or a notice of demand of justice regarding their grievances. The experience goes to show that the officers of the Govt. of Rajasthan are not concerned with this representations and the notice of demand for justice given by the employees and the officers regarding their grievances before they approach to the Court/Tribunal. It is true that the Tribunal has been constituted by the State of Rajasthan but at least 30 to 40% cases regarding the service matters can be resolved out at the Government level itself if its officers are really honest and faithful to their duties which they owe to their employer and the public. But the experience is that the officers of the State of Rajasthan even not acknowledge the representation and the notice of demand of justice sent by the employees/officers regarding their grievances of service matters what to say to considers are acting it results only in litigation, litigation and litigation. It is not beneficial to the Govt. as it has to spend huge amount of the peoples money in the litigation. Secondly a good time of its officers is being consumed in this litigation which otherwise could have been better utilised for the other important works. Once a representation/notice of demand of justice is received it has to be considered by the Government. If it is done it may serve two fold purposes. Firstly as said earlier 30 to 40% litigation may not come in the court and that is how the Government may save the substantial money to be spent in the litigation and public time. Secondly after consideration of the matter when the employees/officers approach to the Court, the Court may have before it a reasoned order of Government on the grievances made by them to it. A reasoned order may be helpful to the Court to finally decide the matter to the extent of 30 to 40% at the preliminary stage itself. That is how the Government may save the money under the head of the litigation expenses and secondly valuable time of its officers. Re-the service matters disputes of employees/ officers the State Government may consider to constitute a permanent grievances redressal committee headed by its senior officers so that it may function with status, control and discipline. We are talking and in fact also doing to consider the disputes between the parties at pre-litigation stage. The Rajasthan State Legal Services Authority through its committees at different levels are taking up the matters at pre-litigation stage. The purpose and object of this programme is to get the dispute settled amicably between the parties and secondly to stop and check in take of the avoidable litigation in the Courts/ Tribunals. This is a State of Rajasthan''s own programme and it has to be conducted by it also at its secretariat level or district level in the service matters disputes of its employees and the officers. For this it may have a Committee of the senior officers of the state, Head of the Departments and the district level so that the grievances of the employees and officers are first has to be raised before these committee in the matter the officer and employee if he is not satisfied they may come to the Court or the Tribunal. If this way State of Rajasthan and its officers work certainly I am not only hopeful but confident that the substantial number of the cases will not come up in the Courts/Tribunals and handsome amount will be saved by the Government which it to spend for litigations and further will save public time. The State as what it is projected and comes out from the news items is facing serious financial crisis. It is finding out the ways how to reduce the State expenses and for this it is introducing at different levels the economic cuts. But in this way as what is suggested in this judgment the State Government is not working in respect of the service matters disputes. If this way and in this direction the State Government works it can conveniently save a good amount of the money which it has to spend in the litigation.

9. In the result all these four petitions are disposed of in the terms that for

resolving of the dispute arises between the petitioners Union of India through the Secretary Defence, Ministry of Defence, Government of India, New Delhi and the State of Rajasthan through the Secretary Finance, Government of Rajasthan, Jaipur; a Committee of senior officers under the Chairmanship of the Chief Secretary of the State of Rajasthan is to be constituted and this Committee has to consider and decide these matters within a period of three months from the date of constitution of the Committee. The Chief Secretary of the State of Rajasthan is directed to constitute this Committee under his chairmanship within a period of 15 days from the date of receipt of copy of this order. In the Committee in addition to the Chairman, the other members may be the Secretary to the Finance Department and Law Secretary. This committee to decide these matters after hearing the representative of both the parties. In case this Committee ultimately fails to resolve this dispute it has to give a reasoned decision and the copy of the same may be given to both the parties. On the request of either of the parties, it has to consider the matter for giving its clearance for the litigation. The compliance of this order be reported to the Court. It is a dispute between the Union of India and the State of Rajasthan, the parties are to bear their own costs.

10. Further it is expected of the Commissioner of Commercial Taxes, Government of Rajasthan, Jaipur that till these matters are finally decided by the Committee, the department will not take any step for recovery of the sales tax assessed against the Union of India.