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Anatech Instruments Pvt. Ltd. Vs Commercial Tax Officer, Sealdah Charge and Others

W.P.T.T. No. 38 of 2010

Court: Calcutta High Court

Date of Decision: Sept. 20, 2010

Citation: (2012) 54 VST 315

Hon'ble Judges: Kanchan Chakraborty, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Sumit Kumar Chakraborty and Debanuj Basu Thakur, for the Appellant; Seba Roy, for the Respondent

Judgement

1. We have heard Mr. Chakraborty so also Smt. Seba Roy at length. This application is taken out against the judgment and order dated 28th

April, 2010, whereby and whereunder the learned Tribunal has refused to accept the contention of the petitioner that the goods it deals with are

not to be classified to attract levy of VAT at 12.5 per cent. It was the contention of the petitioner before us that the nature of the goods it deal with

are diesel smoke meter and gas analyzer. Hence, the same should be classified under serial No. 54B(xxviii) being the residuary clause in Schedule

C of the West Bengal Value Added Tax Act (hereinafter referred to as, ""the Act"").

2. This issue was pending for quite some time. It appears that all the time the assessing officer was of the view that the goods dealt with by the

petitioner attracts a levy of tax at 12.5 per cent. Time and again, the petitioner approached the revisional authority or the appellate authority, who

have not decided the issue finally. Therefore, each and every assessment year, the petitioner had hither to been facing problem on the question of

correct classification vis-a-vis the goods dealt with by it. Ultimately, the petitioner without approaching the revisional authority or the appellate

authority, challenged the decision of the assessing officer for the assessment year 2007-08 before the learned Tribunal RN-823 of 2009 dated

April, 28, 2010. in order to get a conclusive decision on the issue.

3. After hearing the learned counsels for the parties at length and going through the records and also the admitted documents, which were not part

of the records, produced by Smt. Seba Roy, it appears to us that both the assessing officer as well as the learned Tribunal have proceeded on the

basis that the petitioner has been dealing with diesel smoke meter and gas analyzer (a pollution control equipment).

4. In our view, the assessing officer so also the learned Tribunal ought to have proceeded on the basis of the returns submitted by the dealer

concerned (here the petitioner) and also to take note of the goods as recorded in the certificate of registration, issued by the appropriate authority.

If there is any ambiguity or doubt in identifying the nature of the goods, then certainly the assessing officer as well as the learned Tribunal have

power to call for production of any paper, document or even the material itself, which is dealt with by the petitioner. In this case, we notice that the

petitioner/dealer in the revised returns mentioned the goods as scientific instruments and software, gas mixture and in the registration certificate,

nature of the goods dealt with by the petitioner is mentioned as glass, glassware opticals and scientific equipments. It is, thus, clear that the

description given in the certificate of registration does not match with the description of the goods mentioned in the returns.

5. We, therefore, fail to understand how the assessing officer or for that matter, the learned Tribunal could come to a finding that the petitioner has

been dealing with smoke meter or gas analyzer (pollution control equipment). There is no recording of the fact that the petitioner produced any

literature or the goods itself, whereby and whereunder the aforesaid conclusion could be arrived at. In fiscal statute regarding impost on any goods,

description of the goods is very vital in order to have the accurate classification. In this case, the conclusion arrived at by the assessing officer so

also by the learned Tribunal, is based on no material or rather without considering any material whatsoever. We can use slightly harsh words that

this conclusion is based simply on surmises and conjecture, not having considered any material whatsoever.

6. According to us, the assessing officer or the learned Tribunal should have proceeded on the basis what has been stated by the dealer in the

returns and not what could be found later. As we have already pointed out, if there had been any doubt in the mind to identify the goods, then

certainly indepth enquiry, on production of materials, is permissible and this exercise ought to have been done. In this case, it was not done so. The

learned Tribunal has automatically accepted the flawed conclusion regarding the nature of the goods dealt with by the petitioner.

7. Therefore, we cannot uphold the judgment of the learned Tribunal nor can we upset it for the time being. Accordingly, we send back the matter

for fresh hearing by the learned Tribunal, who shall proceed on the basis of the returns submitted by the petitioner and taking note of the

description of the goods given in the registration certificate. If there be any doubt regarding identification of the goods for the purpose of

classification, then certainly it would be open for the learned Tribunal to call for any material, viz., any literature or the goods itself, as we find in the

returns it is mentioned scientific instruments which is a wide and generic term and it may include many things. So there are points which are

required to be considered as the same were not considered at all.

8. Accordingly, we dispose of this application keeping the judgment and order of the learned Tribunal in abeyance. The learned Tribunal shall

proceed afresh taking note of our observations mentioned above and decide the matter afresh. This decision shall be arrived at within a period of

three months from the date of communication of this order. On re-consideration, if the decision is found at variance with the present one, obviously

the learned Tribunal will recall the order and pass appropriate order. However, the petitioner shall go on paying the taxes at 12.5 per cent which

will abide by the result of the fresh adjudication of the learned Tribunal. In the event, the petitioner succeeds, then the excess amount realised shall

be refunded with interest at eight per cent per annum.

9. This matter shall be dealt with by the Bench comprising of the appropriate Members and including the Chairman of the learned Tribunal.

10. Xerox copy of the returns submitted by the petitioner and copy of the registration certificate are kept with record.

11. This application is, thus, disposed of. There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to

the applicants.