IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6435 of 2014 (O&M)
Date of decision: 15.9.2016

M/s Gill Trading Company

.. Petitioner

v.
State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Balbir Singh Jaswal, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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Rajesh Bindal J.

The petitioner has filed the present writ petition disputing the demand of ₹ 37,38,495/- from him on account of balance amount to be paid by him on account of purchase of trees. Further prayer has been made for issuance of tax invoice to enable the petitioner to get input tax credit and deposit the amount of tax deducted at source against PAN No. of the petitioner.

Learned counsel for the petitioner submitted that tender of the petitioner for purchase of trees standing on different roads was accepted for a sum of ₹ 69,01,450/-. As per the acceptance conveyed to the petitioner vide letter dated 23.4.2012, the amount included VAT and TCS. A direction is required to be issued to the respondents to issue tax invoice to the petitioner to enable him to claim input tax credit for the amount of tax charged and further directing the respondents to deposit the amount of TCS against his PAN No. The submission is that when the amount has specifically been charged from the petitioner, needful is required to be done. In the absence thereof, the petitioner will not be able to take the benefit of the amount of tax paid.

On the other hand, learned counsel for the respondents submitted that the department was not a registered dealer under the provisions of the Punjab Value Added Tax Act, 2005 (for short, 'the Act') on the date of sale of trees to the petitioner. It got itself registered for the first time on 21.5.2013 w.e.f. 9.5.2013. Prior to that, being not a registered dealer, the department could not issue any tax invoice to the petitioner. It was further submitted that against the tenders floated for sale of trees standing on different roads, the price offered by the petitioner was accepted. There was no condition that the department will issue any tax invoice. What has been mentioned in the communication dated 23.4.2012 to the petitioner is the cost of trees to the department as per the calculation of the Forest Department. As the amount offered by the petitioner was more than the cost, the tender was accepted. The amount of tax written was deposited by the Forest Department. He further submitted that the petitioner removed all the trees, but still had not paid the entire amount to the department, hence, he does not deserve to be heard on merits.

After hearing learned counsel for the parties, we do not find any merit in the present petition. The fact that the petitioner had removed all the trees, for which he had submitted the tender and had not paid the entire amount is not in dispute. His claim is for issuance of tax invoice to enable him to claim input tax credit for the amount of tax paid. It is not in dispute that the department, which sold the trees to the petitioner, was not a registered dealer under the Act on the date the tender was floated. No amount of tax has been charged on the sale price of the goods. The petitioner has not referred to any terms in the tender that the department had agreed to provide input tax credit certificate to the petitioner by issuing tax invoice. In fact, the department could not possible issue the tax invoice at that time as it was not even registered under the Act. The communication dated 23.4.2012, accepting the offer made by the petitioner, merely suggests that cost of the trees was less than the amount offered by the petitioner, hence, the same was accepted. It does not show that the amount of tax was being charged from the petitioner, for which tax invoice was to be issued to enable the petitioner to claim input tax credit.

For the reasons mentioned above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

15.9.2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No