

RAJASTHAN TAX BOARD, AJMER

Appeal No. 2426/2016/Alwar

Assistant Commercial Taxes Officer,
Ward-1, Anti Evasion, Bhiwadi.

-----Appellant

Vs

M/s Bhiwadi Cylinders Pvt. Ltd, Bhiwadi

-----Respondent

D.B.

Shri K.L. Jain, Member

Shri O. S. Ashiya, Member

Present

Shri R.K. Ajmera, Dy. Govt. Adv.

-----For Appellant

None appeared for the Respondent

Dated : 27.12.2017

Judgement

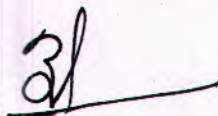
This Appeal has been filed by Revenue against order of the appellate authority, Commercial Taxes, Alwar, passed in appeal no. 48/RVAT/ 2015-16/ App. Auth. Alwar, dated 30.06.2016 by which order dated 03.06.2015 of ACTO, ward-I, Anti-evasion Bhiwadi passed u/s 76 (6) of the RVAT Act, 2003 (hereinafter called the 'Act') was set aside.

1- Brief facts of the case are that on 22.05.2015 the Anti-evasion authorities checked the vehicle No. DL 1GC 0366 while transporting goods i.e. copper wire rods from Delhi to Bhiwadi. The incharge of the vehicle/ goods submitted the following documents:-

(i) Bill No. TI/024 dated 21-05-2015 of M/s Kandoi Metal Powders Mfg. Co. Pvt. Ltd, VKI, Jaipur, TIN 08611651351 for copper wire rod weighing 8999 Kg, in which purchaser/consignee was declared to be M/s Bhiwadi Cylinders Pvt. Ltd., Bhiwadi (TIN 08640851230) and value of goods declared was Rs. 4015804/- ;



- (ii) G.R. No. 2738 dated 21-05-2015 of M/s Maa Shakumbri Logistics Pvt. Ltd., Sadar Bazar, Delhi for copper wire rod, weighing 8999 Kg, from Jaipur to Bhiwadi.
- 2- The driver of the vehicle, in his statement given before the enquiry officer stated that he was carrying the said goods from Shahdara, Delhi and the same were to be unloaded in Bhiwadi. On further search of the vehicle cabin, another bill was found (Bill No. RI/042 dated 21.05.2015) which was issued by M/s Brilliant Metals Pvt. Ltd, Shahdara , Delhi (Tin - 07100413249) and consignor name was mentioned as M/s Arcotech Limited, Plot No 181, Sector-3, Industrial Growth Centre, Bawal (Tin- 06482704633). The quantity of the goods was mentioned exactly the same (8999 kg), as declared in the bill as submitted at the time of checking of the vehicle. The enquiry officer arrived at the conclusion that goods were transported through two sets of bills, one for Shahdara, Delhi to Bawal, Haryana and another for Jaipur to Bhiwadi, with intention to evade the tax as the goods in question required form VAT-47 to be carried alongwith it.
- 3- The case was transferred from prosecutor officer (ACTO Ward-III, AE, Bhiwadi) to adjudicating officer i.e. ACTO Ward-I, AE, Bhiwadi, who issued a show cause notice to M/s Bhiwadi Cylinders Pvt. Ltd. Bhiwadi, alleging that the goods were infact transported from Delhi to Bhiwadi for which statutory form VAT-47 was required to be carried alongwith the goods, which was not produced at the time of checking of vehicle. Accordingly, for violation of section 76(2)(b) of the Act, penalty u/s 76(6) was proposed to be imposed, through notice dated 28.05.2015.
- 4- In its reply dated 03.06.2015, M/s Bhiwadi Cylinder Pvt. Ltd. has submitted that it has purchased the material from





M/s Kandoi Metal & Powders Mfg Co. Ltd, Jaipur and the same has been purchased from Jaipur after paying 5% VAT. It has been further submitted that they don't know where from the goods has come though they purchased the material from Jaipur.

- 5- The assessing authority in his order dated 03.06.2015 has held that the dealer so as to avoid the submission of form VAT-47 with intention to evade the tax, has deliberately got prepared two bills, one from Delhi to Bawal (Haryana- Rajasthan Border) and another from Jaipur to Bhiwadi and imposed a penalty u/s 76 (6) of the Act, amounting to Rs. 11,47,373/-.
- 6- Being aggrieved of the penalty order, the dealer filed an appeal before the appellate authority, Alwar, who vide his order dated 30.06.2016 set aside the penalty and accepted appeal of the appellant dealer. The appellate authority has held that M/s Kandoi Metal Powders Manufacturing Company Pvt. Ltd, Jaipur had bought the goods in questions from M/s Brilliant Metals Pvt. Ltd. Shahadra, Delhi through invoice number RI/043, Dated 21.05.2015 and during the transit of the goods, sold the same to M/s Bhiwadi Cylinders Pvt. Ltd, Bhiwadi through invoice number TI/04 dated 21.05.2015, well before the goods reached Bhiwadi. The appellate authority has further held that the importer firm took away the original documents from the driver and gave him another set of documents for Jaipur to Bhiwadi, therefore, there was no requirement to carry Form VAT-47 and accordingly, the requirement of section 76(2)(b) of Act read with rule 53 of the RVAT Rules, 2006, stood fully complied with. It has been further held that the competent officer has not proved that documents so produced were fraudulent, false or bogus. It has also been held that as the transaction was between M/s Brilliant Metals Pvt. Ltd, Shahadra, Delhi and M/s Kandoi Metal Powders Manufacturing

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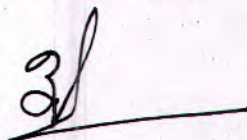
Company Pvt. Ltd, Jaipur and the importer firm has submitted the Form VAT-47 before the competent authority and despite that if any action was required to be taken that should have been taken against either M/s Kandoi Metal Powders Manufacturing Company Pvt. Ltd, Jaipur or M/s Brilliant Metals Pvt. Ltd, Shahdara, Delhi, because the inter-state transaction was held between these two. The appellate authority, on the basis of these findings, has set aside the penalty and accepted the appeal.

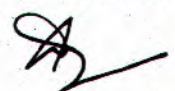
- 7- Heard the learned Deputy Govt. Advocate, who submitted that learned appellate authority has grossly erred in interpreting the provisions of section 76(2) of the Act r.w. rule 53 of the RVAT rules, 2006 as well as the nature of transaction. He further emphasized that the dealer has narrated a concocted story so as to escape from the penal provisions.
- 8- No one appeared for the respondent; still the matter is decided on merit.
- 9- We have carefully gone through the pleadings and perused the record. This is undisputed that at the time of checking of the goods under transportation, the vehicle carrying the goods i.e. copper wire rods weighing 8999 kg, was coming directly from Delhi and at the time of checking the documents presented before the Anti-evasion authority pertained to movement of goods within the State i.e. Jaipur to Bhiwadi. In his statements, the driver of vehicle categorically stated that he has transported the goods from Delhi to Bhiwadi. It was only on search of cabin of the vehicle that the checking authority found another bill of M/s Brilliant Metals Pvt. Ltd Shahdara, Delhi issued in the name of M/s Arcotech Ltd. Bawal, which consisted having the same quantity of goods i.e. 8999 kg, and a toll payment slip of M/s Millennium City Expressway Pvt Ltd,



KM 42 Toll Plaza (Delhi- Gurgaon section), the date and time being the 22 May 2015, 12:07 AM.

- 10- After finding two sets of documents, the enquiry officer reached to conclusion that as the goods have been transported from out of the State, there was a statutory requirement to carry Form VAT-47 alongwith the goods. The enquiry officer issued a notice u/s 76(5) to incharge of the goods on 22.05.2015 to explain the things as the documents appeared to be suspicious. On 27.05.2017, the authorized signatory of M/s Bhiwadi Cylinders Pvt. Ltd appeared before the enquiry officer and requested to be impleaded as an interested party because the goods in question were consigned to them. Consequently, another notice u/s 76(5) of the Act was issued to M/s Bhiwadi Cylinders Pvt. Ltd for the hearing date 28.05.2015, for which a reply was filed by the said dealer on 27.05.2015.
- 11- After getting reply of the consignee dealer and deliberating upon the facts and circumstances of case, the enquiry officer reached to the conclusion that the goods were infact coming from Delhi for which Form VAT-47 was mandatorily required.
- 12- The adjudicating officer after hearing the dealer has not accepted the reply and vide his order dated 03.06.2015 imposed penalty u/s 76(6) of the Act amounting to Rs. 11,47,373/-.
- 13- It is worthmentioning that the driver at no point has said that he was carrying another set of documents which included Form VAT-47, and that handed it over the same to Jaipur firm's representative after entering the State. Had there any declaration form existed alongwith the goods and taken away by the Jaipur importer, the same could have been submitted within minutes because the vehicle crossed Gurgaon Toll Plaza (42 km Delhi-Gurgaon sector) at 12:07 AM on 22.05.2017 and





vehicle was checked in Bhiwadi at about 01:28AM/22.05.2017. As the vehicle was checked instantly almost on arrival in Bhiwadi and the document if taken away by the Jaipur firm's person could have been produced within minutes if sounded to do so, either by the driver or the consignee firm. So this very argument is found to be non-existent of any such an event and devoid of any substance, rather it is a maneuver totally concocted to hide the real motive behind the transaction.

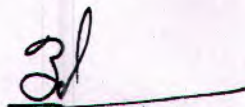
- 14- It is also noteworthy that the distance of Bhiwadi from Shahadra, Delhi is about 90 km and that from Bawal is mere 32 km. By Keeping two sets of bills it was safer to show the movement of goods initially from Delhi to Bawal which is situated in Haryana near Rajasthan Border, closer to Bhiwadi, if checked by Haryana Authorities, and the second set of documents to show as if the movement of goods originated within the State of Rajasthan. So, the facts and circumstances prove the motive behind the transaction to be to ultimately keep it off the record as the submission of form VAT 47 would have necessitated the parties to enter the goods/transaction into their books of accounts.
- 15- More so, there was no reason to make the bilty or the Goods Movement Receipt (GR) from Jaipur to Bhiwadi as the GR must have been prepared from actual place of loading of goods to the place of destination. If at all, it was intended to deliver the goods to the Bhiwadi party then the bilty from Shadhara to Jaipur (which was not in existence) should have been endorsed, instead of making a bilty for Jaipur to Bhiwadi, that too by a Delhi Transporter. Therefore, the contention of the dealer in his reply before the Appellate authority and as accepted by him, that a person of the Jaipur firm took away the first set of documents for Delhi - Jaipur transaction after the vehicle reached in Rajasthan and then gave a new set of

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documents to driver, is found to be concocted and a cover up story only.

- 16- It is established beyond doubt that the first set of documents (i.e. Bill No. RI/042 dated 21.05.2015) was prepared to show the movement of goods from Delhi to Bawal (Haryana) and the second set of documents as submitted to checking authorities in Bhiwadi, was prepared to show the movements of goods from Jaipur to Bhiwadi. So, if at all, contention of the dealer is considered to be true, then there must have been a third set of documents too, which should have been billed by M/s Arcotech Ltd, Bawal (TIN- 06482704633) to M/s Kandoi Metal & Powders Mfg. Ltd, Jaipur alongwith the statutory Form VAT-47, but neither such documents were in existence nor the chain of transactions has been established. The dealer in connivance with the Jaipur dealer tried to justify the transaction to be an intra-state transaction so that no necessity arises to furnish the Form VAT-47 and thus, he can keep the transaction out of his books of accounts/record.
- 17- The Appellate Authority, while interpreting section 76(6) of the Act, has held that penalty can be imposed in two situations namely, (i) when there is any violation of section 76(2)(b); and (ii) when the documents, after due verification, are found to be bogus or false. Further, the Appellant Authority has arrived at the conclusion that as the goods in question were transported with valid documents and those documents after due enquiry have not been proved to be forged, false or bogus, therefore, the imposition of penalty U/s 76(6) can't be held to be legally justified.
- 18- In this backdrop, provisions of sub-section (2) and sub-section (6) of section 76 of the Act, are to be studied and interpreted. Firstly, the sub-section (2) is re-produced hereunder:-





"(2) The owner or a person duly authorized by such owner or the driver or the person Incharge of a vehicle or carrier or of goods in movement shall—

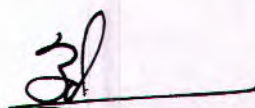
- (a) Stop the vehicle or carrier at every check post or barrier, and while entering and leaving the limits of the State bring and stop the vehicle at the nearest check post or barrier, set-up under sub-section (1).*
- (b) Carry with him a goods vehicle record including "challans" and "bilties", invoices, prescribed declaration forms and bills of sale or despatch memos.*
- (c) Produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post or barrier.*
- (d) Furnish all the information in his possession relating to the goods; and*
- (e) allow the inspection of the goods by the Incharge of the check-post or barrier or any other person authorised by such Incharge.*

Explanation.— *For the purpose of this Chapter 'goods in movement' shall mean —*

- (i) The goods which are in the possession or control of a transporting agency or person or other such bailee.*
- (ii) The goods which are being carried in a vehicle or carrier belonging to the owner of such goods; and*
- (iii) The goods which are being carried by a person."*

Sub-section (6) is also reproduced hereunder:-

"(6) The Incharge of the check-post or barrier or "the officer authorized" under sub-section (4), after having given the owner of the goods or person duly authorised in writing by such owner or person Incharge of the goods, a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (b) of sub-section (2) or for submission of false or forged





documents or declaration, a penalty equal to thirty percent of the value of such goods."

- 19- On minute perusal of the provisions as contained in sub-section (2) and in light of the fact and circumstances of the case, it is found that the person incharge of the goods/vehicle has though complied with the requirement of clauses (a), (d) and (e) of sub-section (2) of section 76, but has failed at the test of clauses (b) and (c), because it did not carry the link or intermediate documents between the (i) Delhi-Bawal transaction and the (ii) Jaipur-Bhiwadi transaction. Secondly, the movement of goods was infact, in the seamless continuity of inter-State movement i.e. from Delhi to Bhiwadi, therefore, the requirement of Form VAT-47 was there, may be, it would have been on part of the person or dealer whosoever caused to bring the goods into the State and it was a bounden duty of incharge of the vehicle to carry the requisite declaration form alongwith the documents. So, in facts and circumstances of the case, the violation of clauses (b) and (c) of sub-section (2) of section 76 is established, as discussed above. So once the violation of subsection (2) of section 76 is established, the penalty U/s 76(6) is attracted.
- 20- One more fact which has been overlooked by the Appellate Authority pertains to the chain of documentation. Since the vehicle transported the goods from Delhi to Bhiwadi and two sets of documents were found with the driver/incharge of the vehicle, first for Delhi to Bawal (Haryana) and second for Jaipur to Bhiwadi. So, logically speaking the third set of documents, if at all it was, should have been there, from M/s Arcotech Limited, Bawal (Haryana) to M/s Kandoi Metal Powders Mfg. Co. Pvt. Ltd, Jaipur. Had this chain of documents been existed, the movements of goods/transaction in question could have been termed realistic and genuine; still the requirement of

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Form VAT 47 was there. It is also worth mentioning, that in his reply to the notice dated 25.05.2015 as submitted before the assessing authority on 03.06.2015, there is no mention whatsoever, of the goods originally been purchased by M/s Kandoi Metal Mfg. Co. Pvt. Ltd, Jaipur from M/s Brilliant Metals Pvt. Ltd. Shahdara, Delhi and that Form VAT 47 was accompanied with the goods. The reply of the dealer is reproduced hereunder:-

"With reference to your Notice Dated 28.05.2015, this is to inform you that we have purchased the material from Jaipur as we have given the order to Jaipur. So we have no knowledge from where the material has come but the material with proper invoice including 5% VAT. So you are requested not to levy the penalty & release the material."

Interestingly, the respondent dealer, who in the grounds of appeal as mentioned Memorandum of Appeal (in short 'MoA') dated 04.07.2015 filed before the Appellate Authority, has submitted as under:-*"We purchased the material from party situated at Jaipur and they provided material directly from Delhi to our factory at Bhiwadi. The Form VAT-47 was attached with the documents of M/s Kandoi Metal Powders Mfg. Co. Pvt. Ltd., Jaipur and further bill from M/s Kandoi Metal Powders Mfg. Co. Pvt. Ltd., Jaipur to M/s Bhiwadi Cylinders Pvt. Ltd., Bhiwadi was also there with the documents. The assessing authority required our Form VAT-47, even though it was clear that we were not part of that inter-state transaction. Further the order passed by the learned assessing authority is very much un-cleared and shows that the authority itself is not clear picture in their mind why the penalty to be impose."*

- 21- As per averment of the respondent dealer, as mentioned in MoA and the documents as filed alongwith the said MoA, it has

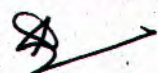
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been submitted that the goods were bought by M/s Kandoi Metal Powder Mfg. Co. Ltd, Jaipur from Delhi firm and that Form VAT-47 was attached with documents of M/s Kandoi Metals Powder Mfg. Co. Ltd, Jaipur, whereas, no such explanation was given at the time of filing of his reply dated 03.06.2015. Had there been any such documents in existence at the time of checking of goods, the same could have and must have been presented alongwith the reply. So, the averment as mentioned in the MoA, are held to be afterthought and to cover up the malfeasance hidden behind in the real transaction and the motive behind it.

- 22- The dealer has also filed alongwith the MoA, a copy of the bill purportedly issued by the Jaipur firm M/s Kandoi Metal Powders Manufacturing Company Pvt. Ltd, bearing number TI/024, dated 21.05.2015, to try to prove that the said goods were infact originally purchased by their firm and then prepared a sale bill in the name of Appellant firm. It is notable that when the goods were still in transit on 21.05.2015, and that its consignee being a Haryana dealer (M/s Arcotech Ltd, Bawal), so how M/s Kandoi Metal Powders Manufacturing Company Pvt. Ltd could have generated/prepared bill for the goods he did not possess or not entitled to possess on 21.05.2017, because the goods were still in Haryana as it crossed the Delhi Gurgaon Toll Plaza on 22.05.2015 at 12.07 AM. So, this argument of the Appellant dealer is not tenable.
- 23- So, we arrive at a considered view and a definite finding that the goods in question were transported with two sets of documents, one for the Haryana State (precisely for Bawal, a Haryana town near Bhiwadi, Rajasthan Border) and another for Rajasthan State, showing that goods were in fact coming from Jaipur to Bhiwadi. By this *modus operandi* the importer of the

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goods tried to avoid the submission of Form VAT-47, taking benefit of short distance of Bhiwadi from Haryana-Rajasthan Border, thus tried to keep the transaction out of the books and would have thus succeeded in evading the tax. So, the motive as well as the methodology stands established.

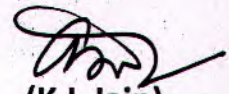
24- As the Appellate authority has failed to appreciate the facts and circumstances of the case and has, in fact, interpreted and applied the provisions injudiciously and inappropriately, therefore, the order of the Appellate Authority is not maintainable, hence set aside and the order of the Assessing Authority is restored.

25- Accordingly, the Appeal of the Revenue is accepted.

26- Order pronounced.



(O.S. Ashiya)
Member



(K.L.Jain)
Member