(2013) 12 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil (VAT) Revision Petition No''s. 7, 18 to 22 of 2012

A Infrastructure Ltd. APPELLANT

Vs

Commercial Taxes Officer, Special Circle RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 43 GST 108 : (2014) 2 RLW 1813

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Vikas Balia and Pancham Surana, for the Appellant; V.K. Mathur and D.K. Godara, for the Respondent

Judgement

Arun Bhansali, J.—These revision petitions are directed against judgment dated 23.11.2011 passed by the Rajasthan Tax Board, Ajmer (''the Board''), whereby, the appeals filed by the petitioner against the orders of Dy. Commissioner (Appeals), Commercial Taxes, Udaipur [''DC (Appeals)''] dated 16.04.2009 upholding the assessment orders passed by the Commercial Taxes Officer, (Special Circle), Bhilwara (''the Assessing Authority'') dated 20.05.2008 and 25.08.2008 for various quarters of the years 2006-07, 2007-08 and 2008-09 disallowing the claim of Input Tax Credit (''ITC'') and charging interest under Sections 22, 18 and 55(4) of the Rajasthan Value Added Tax Act, 2003 (''the Act''), were dismissed. The facts in brief may be noticed thus: the petitioner Company is engaged in the business of manufacturing Asbestos Cement Pressure Pipe and Asbestos Cement Sheets (''A.C. Pressure Pipe and A.C. Sheets''); the petitioner availed ITC on the purchase of raw material used in the manufacture of A.C. Sheets; the Assessing Authority issued notices to the petitioner for disallowing ITC on purchase of raw material used in manufacturing A.C. Sheets for the period under reference; the petitioner filed its detailed reply to the notice; however, not accepting the reply, the Assessing Authority while passing orders u/ s 22 of the Act disallowed the ITC and charged interest.

2. The petitioner filed appeals before the DC (Appeals), however, the appellate

authority also rejected the appeals by common judgment dated 16.04.2009.

3. Aggrieved, the petitioner filed second appeals before the Board, however, the Board after hearing the parties, while relying on the judgment of this Court in A.C.T.O. Vs. Suncity Trade Agency, also dismissed the appeals observing and holding thus:--

This bench confirms the finding of DC (Appeals) that the appellant company, a manufacture of A.C. Sheets, which has not charged VAT on their sales is exempt from tax on sale of its manufacture product, as per notification, meaning thereby that not the unit/institution is exempt from tax but the sales of its goods are exempt from tax, which squarely fall under the definition of exempted goods. Therefore the A.C. Sheets manufactured and sold by the appellate company are exempted goods and thus not eligible for availing ITC. We agree with the view taken by the appellate authority on the issues of the case and find no cause to interfere in his order.

4. It is contended by learned counsel for the petitioner that the Board fell in error in affirming the judgment passed by the DC (Appeals); the Board failed to take into consideration the real purpose and purport of the provisions of the Act, the Notifications issued thereunder as applicable to the petitioner and the basic principles of interpretation of statutes. Learned counsel made submissions on the scheme of Section 8 of the Act, which deals with exemption of tax, the history of exemption Notifications issued under the Rajasthan Sales Tax Act, 1994 and various Notifications issued under the Act from time to time dealing with A.C. Sheets; further, principally submitting that in terms of Notification dated 09.03.2007 issued under Sub-section (3A) of Section 8, it is the ''manufacturers of Asbestos Cement Sheets and Bricks'' who have been exempted and, therefore, it cannot be said that the ''A.C. Sheets'' manufactured by the petitioner are ''exempted goods'', which is a prerequisite for denying ITC u/s 18 of the Act.

5. Reliance was placed on the judgment of this Court inACTO v. Abhishek Granites Ltd. 23 Tax-World 285 in support of the contention that exemption to unit is different from exemption to the transaction of sale of the commodity and Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., to support the contention that if two views are possible, view in favour of assessee should be accepted.

6. Reliance was also placed on certain Notifications issued under the Act in relation to Self Help Groups and Institutions, Cooperative Societies and Individuals registered with the Khadi and Village Industries Commission or the Rajasthan Khadi and Village Industries Board, who though have been exempted u/s 8(3) of the Act, specific condition has been prescribed that no ITC shall be claimed by such dealers.

7. Learned counsel for the petitioner also relied on the background, in which, the Notifications dated 09.03.2007 were issued with reference to the note-sheet of the Finance Department in respect of the proposed amendments to the

Rajasthan Finance Bill, 2007 and a communication issued by the Commissioner, Commercial Taxes, Rajasthan, Jaipur to all Dy. Commissioner (Administration), Commercial Taxes Department, in substance indicating that though the petitioner is exempt from tax, A.C. Sheets manufactured by it are not exempted goods.

8. Per contra learned counsel for the respondent submitted that vide Notification S.O. 372, whereby, the manufacturers of A.C. Sheets and Bricks were included at S. No. 20 in Schedule-II, entitles the units to claim exemption on the sale of manufactured goods on the fulfillment of certain conditions and in view of specific provision of Section 18(1)(e) of the Act, ITC cannot be allowed.

9. Reliance was placed on Notification S.O. 377 dated 09.03.2007 issued u/s 8(3) of the Act to state that A.C. Sheets clearly fall within exempted goods. Submissions were made with reference to definition of ''exempted goods'' and ''goods'' contained in Sub-sections (13) and (15) of Section 2 of the Act, respectively that irrespective of whether the Notification is issued under Sub-sections (1) or (3) or (3A) or (4), the goods would fall within the definition of exempted goods and, consequently, petitioner would not be entitled for ITC. Reliance was also placed on the judgment of this Court in Suncity Trade Agency (supra).

10. I have considered the rival submissions.

11. Before considering the contentions raised by learned counsel for the parties, it would be appropriate to notice the provisions of the Act, which are relevant for the present purpose:-

Section 2(13) "Exempted goods" means any goods exempted from tax in accordance with the provisions of this Act;

(15) "goods" means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be served before sale or under the contract of sale;

Sec-8. Exemption of tax.-

(1) The goods specified in the Schedule-I shall be exempt from tax, subject to such conditions as may be specified therein.

(2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by Notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-I, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

(3) The State Government in the public interest, by Notification in the Official Gazette, may exempt whether prospectively or retrospectively from tax the sate

or purchase by any person or class of persons as mentioned in Schedule-II, without any condition or with such condition as may be specified in the Notification.

(3A) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by Notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-II, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

(4) The State Government may, if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this Act in respect of any class of sates or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the Notification.

(5) Every notification issued under this section shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for a period of not less than 30 days, which may comprised in one session or in two successive sessions and if before the expiry of the sessions in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such Notification or resolves that any such Notification should not be issued, such Notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

18. Input Tax Credit:-

(1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of section 3 or section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of:-

(a) sale within the State of Rajasthan or;

(b) sale in the course of Inter-State trade and commerce; or

(c) sale in the course of export outside the territory of India; or

(d) being used as packing material of goods, other than exempted goods, for sale; or

(e) being used as raw material except those as may be notified by the State Government in the manufacture of goods other than exempted goods, for sale within the State or in the course of Inter-State trade or commerce; or

(f)

(g)

(emphasis supplied)

12. The scheme of Section 8 of the Act, which deals with exemption of tax reveals that while Sub-section (1) exempts the goods specified in the Schedule-I, Sub-section (2) provides for addition, omission, amendment, modification in Schedule-I, Sub-section (3) provides for exemption to any person or class of persons as mentioned in Schedule-II, Sub-section (3A) provides for addition, omission, amendment and modification in Schedule-II, Sub-section (4) provides for exemption to any class of sales or purchases for promoting the scheme of Special Economic Zones or exports and Sub-section (5) provides for the procedure for grant of such exemption. The section also empowers the State Government to impose conditions for grant of exemption of tax. Section 8 therefore, clearly specifies three types of exemptions i.e. (i) goods specified in the Schedule-I, (ii) person or class of persons as specified in Schedule-II and (iii) sales or purchases for promoting Special Economic Zones or exports.

13. So far as allowance of ITC is concerned, u/s 18 of the Act the same is allowed in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in the same manner as may be prescribed, inter alia, for the purpose of being used as raw material except those as may be notified by the State Government in the manufacture of goods, for sale within the State or in the course of inter-State trade or commerce. However, if the manufactured goods are exempted, the ITC is not available in terms of sub-clause (e) of sub-section (1) of Section 18 of the Act.

14. It is thus apparent that u/s 18(1)(e) of the Act, it is only the ''exempted goods'', which have been taken out of the purview of ITC and not person or class of persons or sale or purchases for promoting Special Economic Zones or exports as envisaged by Section 8(3), (3A) or (4), the use of words ''other than exempted goods'', therefore, necessarily means the goods specified in the Schedule-I u/s 8(1) of the Act.

15. It would also be appropriate to notice the Notifications having material bearing:-

Notification dated 16.03.2005 under the Act of 1994:--

S. No. 1874:F. 4(78)FD/Tax/2004-168 Dated 16-03-2005

In exercise of the powers conferred by section 15 of the Rajasthan Sales Tax Act, 1994 (Rajasthan Act No. 22 of 1995) and in supersession of this Department''s Notification No. F. 4/(68)FD/Tax-Div/99-271 (S. No. 1147), dated, January 24, 2000 (as amended from time to time), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from tax the sale of asbestos cement sheets and bricks, manufactured in the State by an industrial unit having fly ash as its main raw material on the following conditions, namely:

1. that such fly ash shall constitute twenty five percent or more in the contents

by weight of such asbestos cement sheets and bricks; and

2. that such unit commences commercial production by 31-12-2006.

This Notification shall remain in force up to 23-1-2010.

Notification dated 01.06.2006:-

Notification

Jaipur, Dated: 01-06-2006

In exercise of the powers conferred by sub-section (2) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following further amendments is SCHEDULE-I appended to the said Act; namely:-

AMENDMENTS

4. After the existing S. No. 60 and before S. No. 61, the following new S. No. and entries thereto shall be inserted, namely:-

Notification dated 05.07.2006:-

Notification

Jaipur, Dated: 05.07.2006

In exercise of the powers conferred by sub-section (2) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments in SCHEDULE-I appended to the said Act, namely:-

AMENDMENT

In Schedule-I appended to the said Act, the existing expression appearing in Column No. 3 against S. No. 60A, shall be substituted by the following expression, namely:-

(1) The goods shall be entered in the Registration Certificate of the selling dealer;

(2) The exemption shall be for such goods, manufactured by the dealer who commences commercial production in the State by 31.12.2006.

(3) The exemption shall be available up to 23.01.2010.

Notification dated 09.03.2007 S.O. 371:-

FINANCE DEPARTMENT

(TAX DIVISION)

NOTIFICATION

Jaipur, March 9, 2007

S.O. 371.-In exercise of the powers conferred by sub-section (2) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments is Schedule-I appended to the said Act; namely:-

AMENDMENTS

In Schedule-I appended to the said Act:-

(1) ....

(2) The existing S. No. 60A and entries thereto, shall be deleted.

(3) ....

Notification dated 09.03.2007 S.O. 372:-

FINANCE DEPARTMENT

(TAX DIVISION)

NOTIFICATION

Jaipur, March 9, 2007

S.O. 372.-In exercise of the powers conferred by sub-section (3A) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments is Schedule-II appended to the said Act, namely:-

AMENDMENTS

In Schedule-II appended to the said Act:-

(1) ....

(2) After the existing S. No. 18 and entries thereto the following new S. Nos. and entries thereto shall be added; namely:-

Notification dated 09.03.2007 S.O. 377:-

FINANCE DEPARTMENT

(TAX DIVISION)

NOTIFICATION

Jaipur, March 9, 2007

S.O. 377.-In exercise of the powers conferred by sub-section (3) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the

State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from payment of tax, the sale of asbestos cement sheets and bricks manufactures in the State having contents of fly ash twenty five per cent or more by weight, on the following conditions, namely:-

(1) that the goods shall be entered in the registration certificate of the selling dealer;

(2) that the exemption shall be for such goods manufactured by the dealer who commenced commercial production in the State by 31.12.2006; and

(3) that the exemption shall be available up to 23.01.2010.

16. A bare scanning of the Notifications reproduced hereinbefore would reveal that under the Act of 1994, the exemption granted was to the sale of A.C. Sheets and Bricks subject to the conditions indicated therein. Under the RVAT Act, 2003 vide Notification dated 01.06.2006, exercising powers u/s 8(2) of the Act, Schedule-I was amended and A.C. Sheets and Bricks having contents of fly ash 25% more by weight was inserted as entry 60A, whereafter on 05.07.2006 by another Notification issued u/s 8(2) of the Act, the Schedule-I was amended and entry 60A was substituted.

17. Thereafter on 09.03.2007 three Notifications were issued dealing with A.C. Sheets, whereby, by S.O. 371 issued u/s 8(2) of the Act, the existing entry 60A was deleted from Schedule-I, by S.O. 372 issued u/s 8(3A) of the Act ''manufacturers of Asbestos Cement Sheets and Bricks'' were added in Schedule-II and by S.O. 377 issued u/s 8(3) of the Act conditions for availing exemption for sale of A.C. Sheets and Bricks manufactured in the State were indicated.

18. From the above, it is clear that while by the Notifications dated 16.03.2005 issued under the Act of 1994, 16.02.2006 and 05.07.2006 issued under the Act, ''A.C. Sheets and Bricks'' were exempted, by Notifications dated 09.03.2007, the goods A.C. Sheets and Bricks were taken out by S.O. 371 (supra) and the manufacturers of A.C. Sheets and Bricks were exempted by inclusion in Schedule-II by S.O. 372 (supra) and conditions for availing such exemption by the manufacturers were indicated by S.O. 377.

19. It is significant that while S.O. 371 has been issued u/s 8(2) of the Act, S.O. 372 and 377 have been issued u/s 8(3A) and (3) respectively, which provisions, as noticed hereinbefore, deals with Schedule-I u/s 8(2) and Schedule-II under Sections 8(3) and (3A), which in turn relates to exemption of goods and exemption of persons respectively, therefore, it is apparent from the Notifications issued on 09.03.2007 that the intention of the State was to exempt the manufacturers of A.C. Sheets and Bricks subject to fulfillment of conditions as indicated in S.O. 377 and to take away exemption available to A.C. Sheets and Bricks as goods, as was available before the said date on account of its inclusion in Schedule-I.

20. The submissions of learned counsel for the respondent that the language and

purport of S.O. 377 clearly indicates that A.C. Sheets and Bricks manufactured in the State having contents of fly ash 2596 or more have been exempted and it is the goods as envisaged by Section 18(1)(e) which is exempted and, therefore, the Tax Board was justified in dismissing the appeals filed by the petitioner cannot be accepted for more than one reason; firstly, the Notification S.O. 377 has been issued u/s 8(3) of the Act, which does not amend Schedule-I to include the said goods under exempted category; secondly, S.O. 371, which is very specific in terms and issued u/s 8(2), takes out the goods A.C. Sheets and Bricks from Schedule-I cannot be ignored so as to treat S.O. 377 having the effect of exempting the goods and not prescribing the conditions for exemption of manufacturers of A.C. Sheets, which have been included in Schedule-II on the same date by S.O. 372; thirdly, the Notification S.O. 377 cannot be read in isolation to the exclusion of the other Notifications issued on the same day and on a harmonized construction of the three Notifications leads to the irresistible conclusion noted above.

21. The note-sheets produced by the petitioner relating to Finance Bill, 2007, obtained by it under Right to Information Act, fortifies the contention raised by the petitioner, wherein, while proposing to take the A.C. Sheets out from the Schedule-I and include the manufacturers in Schedule-II, it has been observed as under:--

Asbestos cement sheets and bricks Units which started manufacturing on or before 31.12.2006 were exempted from paying tax till 23.01.2010 by including them in Schedule I. Such exemption should have been provided by including such Units in Schedule-II, which is now being proposed. (C/46, 61).

22. The communication dated 26.04.2008 issued by Commissioner, Commercial Taxes, Rajasthan, Jaipur to all the Dy. Commissioner (Administration), Commercial Taxes Department clearly indicates that by Notification dated 09.03.2007, the manufacturers of A.C. Sheets have been included in Schedule-II and, therefore, the goods sold by dealers, who have purchased goods from manufacturers like the petitioner is liable to pay tax on sale of A.C. Sheets and such subsequent sale is liable to tax, also indicates that even as per the interpretation put by the department on the three Notifications dated 09.03.2007, it is the manufacturers and not the goods, who are exempt from tax.

23. The communication dated 26.04.2008 construing the Notifications dated 09.03.2007 can be used as contemporanea expositio. Hon''ble Supreme Court in Collector of Central Excise, Guntur Vs. Andhra Sugar Ltd., Venkataraypurama, while dealing with an exemption Notification under the Central Excise and Salt Act, 1944 observed and held as under:--

5. It is well-settled that the meaning ascribed by the authority issuing the Notification is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, It is a well-settled principle of

interpretation that Courts in construing a Statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment.

24. So far as the judgment of this Court in the case of Suncity Trade Agency (supra) is concerned, the said judgment dealt with a situation wherein by exemption Notification stainless steel flats, ingots and billets were exempted from tax on the conditions indicated in the Notification and this Court came to the conclusion that merely because the exemption is conditional or is given subject to fulfillment of certain conditions, it does not mean that such goods will fall outside the definition of exempted goods. The said judgment apparently has no application to the facts of the case. The term defined u/s 2(13) of the Act also deals with exempted goods and not with exemption of person or class of persons as indicated in Section 8(3) of the Act.

25. The intention of the legislature in incorporating Section 18(1)(e) of the Act is also apparently clear, which takes away the exempted goods from the purview of ITC and not the person or class of persons exempt u/s 8(3) as nothing prevented the legislature from including besides exempted goods, exempted persons also u/s 18(1)(e) of the Act. The fact that goods and dealers are treated separately is also evident from provisions of Section 5 of the Act.

26. The aspect that those included in Schedule-II are entitled for ITC is also fortified from the fact that in the conditions indicated for exemption of Self Help Groups and those, who have been registered with the Khadi and Village Industries Commission or Rajasthan Khadi and Village Industries Board by the Notifications S.O. 376 and S.O. 378 issued on the same date i.e. 09.03.2007 a specific stipulation has been made in the Notifications issued u/s 8(3) of the Act as under:--

No input tax credit shall be claimed by such dealers in respect of purchase of raw materials used for manufacture of aforesaid goods.

27. If the persons included in Schedule-II were not entitled to claim ITC, there was no reason to include the said conditions for the above-noted persons. Apparently, it is the sale of goods made by person or persons included in Schedule-II, which is exempt and not the goods manufactured by them, whereas, for denying ITC, the requirement is that of ''exempted goods''.

28. In view of what has been considered above, it is apparent that in the present case in view of express language of Section 18(1)(e) of the Act, Notifications S.O. 371 and S.O. 372 read with S.O. 377, the petitioner who is manufacturer of A.C. Sheets is entitled to avail ITC and the authorities below were not justified in denying Input Tax Credit to the petitioner based on interpretation put by them to inclusion of the petitioner in Schedule-II u/s 8(3A) and Notification S.O. 377 dated 09.03.2007 issued u/s 8(3) of the Act. Consequently, the revision petitions are allowed. The impugned judgment dated 23.11.2011 passed by the Board, the order dated 16.04.2009 passed by the DC (Appeals) and the assessment orders

dated 20.05.2008 and 25.08.2008 passed by the Assessing Authority are quashed and set aside. No costs.

