(2013) 10 RAJ CK 0071

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No''s. 55 and 62 of 2002

ACTO — APPELLANT

Vs

CIMMCO Ltd. — RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 43 GST 453 : (2014) 68 VST 145

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Tanvi Sahai and R.B. Mathur, for the Appellant; Alkesh Sharma, for the Respondent

Judgement

J.K. Ranka, J.—These two instant revision petitions relating to assessment years 1989-90 and 1990-91 are directed against the common order passed by the Rajasthan Tax Board, (in short ''Tax Board'') who vide order dated 06/02/2002 in appeals No. 200/95/Jaipur and 201/95/Jaipur allowed the appeals of the respondent-assessee. Since the facts are common, therefore, both the revision petitions are being disposed of by a common order. These two revision petitions were admitted on 23/09/2002 on the following questions of law:--

(i) Whether in the facts and circumstances of the case, the Rajasthan Tax Board, Ajmer was justified in allowing the Appeal of the assessee without considering the facts, law and circumstances of the case.

(ii) Whether in the facts and circumstances of the cases, the Rajasthan Tax Board, Ajmer was justified in interpreting the provisions of law.

(iii) Whether in the facts and circumstances of the case, the Rajasthan Tax Board, Ajmer was justified in setting aside the tax and interest levied by the Assessing Authority on works contract.

(iv) Whether in the facts and circumstances of the case, the Rajasthan Tax Board, Ajmer was justified in setting aside the tax and interest on excise duty.

(v) Whether in the facts and circumstances of the case, the Rajasthan Tax Board, Ajmer was justified in reversing the findings given by the Dy. Commissioner (Appeals-II).

2. The brief facts as emerging on the face of record is that the respondent is a limited company and has been carrying on the business of Manufacturing/ production of Railway Wagons, Cement Plant Machinery, Steel Structurals, Spare Parts etc.

3. The bone of contention in the instant revision petition is (1) whether tax is leviable in respect of interstate transfer of property in goods involved in execution of a works contract (2) whether CST is payable on the component of Central Excise paid on such transactions in the event of full reimbursement by the Central Government under its scheme of encouraging "deemed exports".

4. It is observed by the Assessing Officer that the respondent-assessee itself had treated the transaction as inter-state sale, but charged CST @ 496 in the invoice subject to submission of "C" Form, therefore, the claim of the respondent-assessee that no tax was leviable in respect of the transaction was not correct. In so far as the second issue with regard to the claim of the respondent-assessee that the Central Excise Duty cannot be treated as part of turnover for working of CST as the entire Central Excise Duty was fully reimbursed by the Central Government under the Scheme of encouraging deemed exports, however, the Assessing Officer was not satisfied and included the Central Excise Duty as part of the gross turnover and charged CST on it.

5. Dissatisfied with the said two claims having been rejected by the Assessing Officer, in both the years the respondent preferred two separate appeals before the DC(A) who also came to the conclusion that the Assessing Officer was correct and justified in rejecting the claim of the respondent insofar as both the issues are concerned.

6. Dissatisfied with the said rejection of the appeals the respondent-assessee preferred two appeals as aforesaid before the Tax Board who, however, was pleased to allow the appeals of the respondent-assessee and gave relief on both the points in both the years.

7. Hence these revision petitions.

8. Ms. Tanvi Sahai, ld. counsel for the appellant submitted that the Tax Board, is unjustified in granting relief on both the claims. She submitted that the Assessing Officer was correct and justified in treating the transaction as sale liable to tax as the respondent-assessee itself had also charged CST @ 4% in the invoice subject to submission of "C" Form, and even sought more time for submission of the remaining "C" Forms, therefore, she submitted that what more was required to be proved by the Assessing Officer, she would further submit that the Tax Board, decided the issue in a summary manner.

9. In so far as the second issue with regard to the Central Excise Duty is

concerned. She would submit that the Tax Board has only relied upon the Scheme of the Central Government and treated it as in the nature of deemed export''. She submitted that the respondent has itself charged the Central Excise in the bill/invoice and once Central Excise Duty forms part of the bills/invoice, therefore, the Assessing Officer had correctly treated it as part of the turnover and accordingly CST was levied. She would submit that even if the respondent did not receive Central Excise Duty from the purchaser and even if it was reimbursed by the Central Government, it makes no difference at all. She further submitted that the judgment relied upon by the Tax Board, were distinguishable and the Tax Board, was unjustified in relying upon the said judgment without holding that the judgments were squarely applicable.

10. Ld. Counsel for the department also relied upon the judgments of (1) Kerala High Court in the case of Hindustan Petroleum Corporation Limited Vs. State of Kerala (2) Apex Court in the case of Dy. Commissioner of Sales Tax (Law), Board of Revenue (Taxes) v. Hindustan Petroleum Corporation (2000) 118 STC 311; (3) Andhra Pradesh High Court in the case of Ranka Cables Pvt. Ltd. Vs. State of A.P., (4) Madhya Pradesh High Court (Indore Bench) in the case of Sanghi Beverages Pvt. Ltd. Vs. Commr. of Sales Tax, accordingly, she submitted that the order of the Tax Board, needs to be reversed on both the issues.

11. Shri Alkesh Sharma, ld. Counsel for the respondent assessee submits that the Tax Board has elaborately discussed both the issues and has rightly come to the conclusion that insofar as the first issue is concerned that the transaction related to movement of certain goods occasioned as a result of works contract for being used in execution of works at the work site and, therefore, it did not form part of interstate sale.

12. In so far as the second issue is concerned he would submit that the transaction was under a global contract drawing finance from IBRD/IDA and it was in the nature of ''deemed export'' and it was fully covered by the Scheme of the Central Government for facilitating such transaction of reimbursing entire Central Excise Duty payable on this transaction by the Joint Chief Controller, Imports and Exports. He would submit that even if admittedly, the Central Excise Duty was charged in the bill/invoice but the same was not received/receivable from the purchaser as it was only reimbursed by the Central Government as referred to hereinabove and therefore, there was no occasion of treating the same as part of the turnover, he also relied upon the judgments of Allahabad High Court in the case of Indian Aluminium Cables Ltd. v. Commissioner of Sales Tax (1999) 115 STC 161; Indian Farmers Fertilizer Co-Operative Ltd. v. State of Uttar Pradesh (1996) 101 STC 460 (All.); and of Hon''ble Apex Court in Commissioner of Sales Tax, U.P. Vs. India Aluminium Cables Ltd., in support of it.

13. I have heard the ld. Counsel for the parties and have perused the impugned order as well as the judgments cited by the ld. Counsel for the parties. At the outset, it may be observed that during the course of the hearing on 06/09/2013 the Court requested both the ld. Counsel for the parties to place on record the

copy of the global con tract/scheme relied upon by the Tax Board, and the time of one week was granted to place on record the said scheme.

14. However, none of the parties placed the said scheme on record and, accordingly, the matter again came up for hearing on 27/09/2013 and again on the said date the court desired ld. counsel for the parties to place on record the said scheme/global contract. Ld. counsel for the respondent assured that it would be submitted within a week and, accordingly, the matter was adjourned for hearing on today that is 4/10/2013 and today also the ld. counsel for the respondent showed inability to place on record the said scheme and submitted that it was for the ld. counsel for the petitioner Assessing Officer to place the same on record.

15. In the absence of said scheme/global contract which has been relied upon by Tax Board, and when the ld. counsel for the petitioner Assessing Officer has submitted that the Tax Board, could not have relied upon the said scheme as facts of the said scheme were entirely different and this Court is certainly entitled to have a look at the scheme relied upon by the assessee and cannot blindly follow the observation of the Tax Board, particularly when serious challenge has been made since beginning by the department and, therefore, in the interest of justice, I feel that the terms and conditions of the global contract/scheme which has been relied upon by the Tax Board, needs to be looked by the Tax Board again as the Tax Board is a final fact finding authority and this Court cannot express any view on the questions answered by the Tax Board, particularly when the petitioner Assessing Officer as referred to above is challenging and have challenged the same and when questions of law has been admitted by this Court, therefore, unless and until the terms and conditions and the scheme/global contract is not before the Court, the issue cannot be decided.

16. Accordingly, without further going into the merits of the issue, the matter is restored back to the Tax Board to decide both the issues afresh, who has to come to a definite finding as to whether the claim of the respondent is correct and justified and since the matter is being restored to the Tax Board, therefore, Tax Board, is also directed to decide afresh and come to a definite finding with regard to question No. 3 as the Tax Board, had come to a conclusion that both the issues are interlinked and interconnected.

17. Accordingly, both these two revision petition stand allowed and order of the Tax Board, is quashed and set aside with the direction to decide afresh in accordance with law and after hearing both the sides, since the matter is quite old, therefore, the Tax Board, is directed to decide the same within a period of four months from the time the certified copy of this order is received by it. No costs.

