(2006) 10 RAJ CK 0010

In the Rajasthan High Court

ACTO APPELLANT

Vs

Ganesh Mishthan Bhandar RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 5

Citation : (2007) 2 RLW 1490

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Nobody has put in appearance on behalf of the non-petitioner despite service.

2. The question of law involved in this revision petition is that whether for business of hotel and restaurant, the dealer is liable to pay the tax in case his annual gross turn over exceeds Rs. 2,00,000/- and whether the dealer of hotel and restaurant is not liable to pay the tax unless after giving benefit of Clause (1) of Notification No. 815 dated 27.6.1990, if his annual gross turn over does not exceed further Rs. 2,00,000/-. The Tax Board held that the assessee''s total turn over is Rs. 4,99,283/-. The Tax Board gave deduction to sales of the sales tax exempted and sales tax paid sales from the said total turnover of Rs. 4,99,283/-. Since the total turn over of the assessee, after deducting Rs. 2,00,000, is less than Rs. 2,00,000/-, therefore, the assessee is not liable to pay any tax.

3. According to the learned Counsel for the petitioner, the dealer comes in the net immediately when his annual gross turn over exceeds Rs. 2,00,000/- in a case where he is engaged in the trade of hotel and restaurant as per the Notification No. 815 dated 27.6.1990. For every Rs. 5,000/- thereafter, that is above Rs. 2,00,000/-, the dealer is liable to pay the tax Rs. 300/- as per Sub-Clause (2) of Notification No. 815 dated 27.6.1990.

4. I considered the submissions of the learned Counsel for the petitioner and perused the reasons given by the Tax Board in its order dated 14.8.2001.

5. The Notification No. 815 dated 27.6.1990 is as under:

S. No. 815: F 4(72) FDGr. IV/87-43 dated 27.6.1990

S.O. 122.-In exercise of the powers conferred by Section 5. RST Act, 1954, and supersession of this Deptt Notfns. No. F.4(72) FDGr. IV/87-60 dated 31.8.1987, as amended from time to time (S. No. 692), the State Govt. hereby notifies that Halwai, Keepers of hotels excluding the hotels of Three Stars and above category (as categorised by the Department of Tourism, Government of India), Restaurants, Refreshment rooms and other eating establishments, Tea stalls, Dhabas or Tandorwalas, shall pay tax on their taxable turnover as under, namely:

(1) Those whose annual gross turnover does not exceed Rs. two lacs. -Nil

(2) Those whose annual gross turnover exceeds Rs. two lacs excluding the turnover of Imported Liquor for every completed give thousand rupees of taxable turnover over gross turnover of Rs. two lacs-Rs. 300.00.

6. A bare perusal of the Notification No. 815 dated 27.6.1990 makes it clear that the dealer dealing in the trade of Halwois, keepers of hotels excluding the hotels of Three Stars and above category of the Department of Tourism, Government of India and the Restaurants, Refreshment rooms and other eating establishment, Tea stalls, Dhabas or Tandoorwalas are not liable to pay tax in case their annual gross turn over does not exceed Rs. 2,00,000/- and they are liable to pay tax @ Rs. 300/- for every completed Rs. 5000/- over the annual gross turn over of Rs. 2,00,000/-. While assessing the tax, the turn over of the imported liquor shall not be taken into account. The Tax Board, therefore, committed error of law in holding that despite annual gross turn over of the dealer of Rs. 4,99,283/-, since his sale after deducting the tax exempted sale and tax paid sale, the amount comes to Rs. 1,86,938/-, which is less than limit of Rs. 2,00,000/-, therefore, the assessee is not liable to pay any tax.

7. In view of the above this revision petition is allowed and it is held that dealer referred in the Notification No. 815 dated 27.6.1990, if has annual gross turn over Rs. 2,00,000/-, then he is liable to pay the tax @ Rs. 300/- over every competed turn over of Rs. 5000/- irrespective of the fact that the turn over above annual gross turnover does not exceed Rs. 2,00,000/-.

8. In view of the above and in view of the definition of turn over given in Sub-clause (44) of Section 2, the order passed by the Tax Board dated 14.8.2001 is set aside and the order of the assessing authority is restored.