(2015) 05 RAJ CK 0164

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 249 of 2005

ACTO — APPELLANT

Vs

Mayur Granites — RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0164

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : V.K. Mathur and Dinesh Godara, for the Appellant

Judgement

Dr. Vineet Kothari, J.

1. Nobody is present on behalf of the respondent-Assessee despite service of notice.

2. This revision petition filed by the petitioner-Revenue is arising out of the judgment dated 10.01.2003 passed by the learned Rajasthan Tax Board, Ajmer in Appeal No. 751/98/Sirohi "ACTO-II, Abu Road v. M/s. Mayur Granites, Abu Road" by which, the learned Tax Board had dismissed the appeal of the Revenue filed against the order dated 02.12.1997 passed by the Deputy Commissioner (Appeals), Jodhpur.

3. The matter pertains to exemption from tax under the Notifications dated 25.09.1985, 06.12.1990 and 27.03.1995 on purchase of machinery.

4. Today, the learned counsel Mr. V.K. Mathur with Mr. Dinesh Godara appearing for the petitioner-Revenue submitted that connected revision petition arising out of the same common order of the Rajasthan Tax Board dated 10.01.2003 has already been decided by this Court namely, S.B. Civil (VAT) Revision Petition No. 227/2005 : Assistant Commercial Taxes Officer, Ward IInd, Abu Road (Sirohi) v. M/s. Padmawati Marble and Granite Tiles on 11.12.2003, while following the detailed judgment of this Court in the case of A.C.T.O., Ward IV, Rajasamand v.

M/s. R.S.R.K. Marbles in which, this Court has held that the appellate authorities including the Rajasthan Tax Board were justified in allowing the exemption to the Assessee on the investment made for purchase of plant and machinery in question since the word "new industry" was inserted only w.e.f. 27.03.1995. The order dated 11.12.2013 is quoted herein below for ready reference:--

"The issue, which arises for consideration in the present revision petition is whether the benefit of exemption under S.O. 91 dated 25.09.1985 and S.O. 255 dated 06.12.1990 is available to an industrial unit already set up and commenced industrial commercial production or is only available to the industrial units, which are in the process of being set up?

It is submitted by the learned counsel for the petitioner that the issue already stands covered by judgment of this Court in A.C.T.O., Ward IV, Rajasamand v. M/s. R.S.R.K. Marbles : S.B. Civil Sales Tax Revision Petition No. 388/2004 decided on 12.07.2011, whereby, this Hon''ble Court came to the conclusion that the appellate authorities have not committed any error in giving such benefit of exemption to the assessee in terms of notification dated 25.09.1985 and, accordingly, dismissed the revision petition.

In view of the judgment of this Court in the case of R.S.R.K. Marbles (supra) and for the reasons indicated therein, this revision petition is dismissed. No costs."

5. The relevant extract from the case of ACTO, Rajsamand v. M/s. R.S.R.K. Marbles [S.B. Sales Tax Revision Petition No. 388/2007, decided on 12.07.2011] is also quoted herein below for ready reference:--

"4. Having heard learned counsels for the parties, this Court is of the opinion that there is no force in the revision petition filed by the Revenue. This Court in the case of Shiv Ganpati Margo Tiles P. Ltd. v. ACTO, Rajsamand (S.B.S.T.R. No. 852/2003, decided on 21.01.2010) has held as under:

"8. There is no dispute about the legal position that exemption Notification has to be strictly construed but once a Unit or assessee falls within the four corners of exemption Notification, liberal interpretation is called for. It is called ''play in the joints''. The Notification in question before this Court dated 27/3/1995 grants exemption from sales tax on plants and machineries for setting up new industrial units in respect of purchase of said plants and machineries. In the present case, the petitioner assessee had admittedly set up a new industrial unit for manufacture of marble slabs and tiles after installation of gang saw machine and it appears that it also obtained the certificate from the concerned authority that it had commenced the commercial production w.e.f. 2/12/1996. However, two machines included in the said project namely Block Dressing Machine and Transformer, orders of which were placed even prior to 2/12/1996, were received after few days on 21/12/1996 and 28/12/1996.

9. The question before this court is as to whether the process of setting up of industrial unit should be treated as continuous or over on the said date

2/12/1996 and whether the purchase of plant and machinery after the said date is not entitled to exemption from tax under the said Notification?

10. The answer by this Court is in negative, in favour of assessee and against the Revenue. The reasons are as follows.

11. As observed above, the process of setting up of an industry is a continuous process which takes a period of time and it is not a thing or description of position like that of ''switch on and switch off''. The petitioner assessee before this court had admittedly set up the industrial unit during the validity of Notification so also placed the order for the two machines to be used in setting up the said industrial unit and had also purchased these two machineries during the operative period of the Notification. Obtaining of the certificate from the competent authority of the Industries Department that after installation of some of the plant and machinery, it commenced the commercial production on 2/12/1996, does not make the said Notification dated 27/3/1995 inapplicable to the said Industry altogether. The project report of setting up of new industrial unit had admittedly covered these two machines also which are integral part of plant and machinery for setting up of an industrial unit for manufacture of marble slabs and tiles. For the delay of few days and even of few months would not make the purchase of said machineries disjuncted from the project itself. More so, when these plant and machinery were also purchased by the petitioner assessee during the validity of Notification itself, which held the field between 27/3/1995 to 31/3/1997, vide clause (i) of the said Notification, the petitioner cannot be denied the said exemption taking a very narrow and pedantic approach in the matter. The process of setting up of industry as per project report does not come to an end on 2/12/1996 when such certificate for commencement of commercial production was obtained by the industry. The said process of setting up of industry can continue even thereafter.

17. Consequently, this revision petition of petitioner assessee is allowed and the orders passed by all the tax authorities below dated 31/3/1999 (Annex. 4) of Assessing Authority, 9/6/2000 (Annex. 5) of Deputy Commissioner (Appeals) and 28/4/2003 (Annex. 6) of Tax Board are set aside and the assessee is held entitled to exemption of tax under the Notification dated 27/3/1995 in respect of aforesaid two machineries purchased by the assessee. The assessee would be entitled to refund of such tax, if any, realized by the Revenue Department in pursuance of the impugned orders with interest. No order as to costs."

5. Therefore, the notification dated 27.03.1995 used the word setting-up of a new industry, whereas in the present case notification dated 25.09.1985 does not impose any such restriction of setting-up of a new industry or machinery to be purchased for setting up of a new industry, and any industrial unit of the specified kind, which the marble industry undoubtedly is, as it deals in marble and is a mineral based industry. Thus, the purchase of machinery (crane) during the operative period of the said notification dated 25.09.1985 cannot be denied such benefit on the basis of artificial cut-off date of commencement of

commercial production as has been done by the Assessing Authority. The case of the present respondent-Assessee stands on a better footings than the one involved before this Court in the case of M/s. Shiv Ganpati Marmo Tiles P. Ltd. (supra).

6. Therefore, the appellate authorities have not committed any error in giving such benefit of exemption to the assessee in terms of notification dated 25.09.1985. There is no force in the revision petition filed by the Revenue and accordingly the same is dismissed. No costs"

6. In view of the above decisions on the issue in hand, it is clear that the legal position is against the petitioner Revenue and, therefore, the instant revision petition filed by the petitioner-Revenue is liable to be dismissed in the same terms.

7. Accordingly and in view of the above, the instant revision petition filed by the Revenue is dismissed. No costs. A copy of the order be sent to the authorities concerned and to both the parties concerned forthwith.