

(2000) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No's. 872 of 1999 and 855, 861 and 873 to 877 of 1999

A.C.T.O.

APPELLANT

Vs

R.K. Constructions and Suppliers

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 2(38), 2(45)

Citation : (2001) 124 STC 701

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh balia, J.—Heard learned counsel for the petitioner. No one appeared for respondent inspite of service.

2. All these eight revisions raise a common question arising in similar circumstance, therefore are being heard and decided together by this common order.

3. The facts of the case are that the respondent-assessee in each case is engaged in business of construction on contract.

4. The facts found by the Tribunal affirming decision of the Deputy Commissioner of Commercial Taxes are that under the terms of contract the assesseees were supplied with cement and steel directly from the awarder and they were to lift sand and gitti from the mine site as per directions of the awarder of contract and the mines from which these materials were to be collected belonged to the awarder. As the respondent-assessee had used in execution of the contract the material supplied by the awarder himself, no question of transfer of property in such goods from the assessee-responent to the awarder of the contract for whom the works were executed in the course of execution of works contract

could arise. Therefore, the same could not be deemed to be a sale of such goods on which tax could be levied.

5. It cannot be doubted that where in case goods in execution of works are supplied by the awarder of contract himself, there is no question of transfer of property in such goods from the executor of the contract to the awarder of contract. Such utilisation of the goods supplied by the awarder himself cannot be considered to be deemed sale within the meaning of definition of "sale" given under the Rajasthan Sales Tax Act. The fact whether the goods in question were supplied to the awarder by the assessee-respondent and that the mines from which such material in question was lifted were of awarder-department of State are not really in dispute. Even otherwise these are finding of fact which are not liable to be interfered with in these revisions.

6. The only ground urged by learned counsel is that since 2 per cent amounts payable to the contractor were deducted under some Government circular to be adjusted against royalty payable on such goods on removal from mine site, it must be deemed that such goods were of the contractor and property in them passed on their being used in execution of works contract.

7. This contention is not well founded. In the face of there being no dispute about the fact that no lease rights in the said mines were granted to the assessee-contractor and that mines and minerals vest in State Government, the removal of minerals at the direction of owner of minerals from the mine site for the purpose of its use in execution of works for the State Government, the owner does not result in vesting of any right to such goods in the contractors, which he could transfer to the awarder. The fact that State Government had devised a methodology getting royalty on such minerals from the contractor, by deducting the same from contract consideration, can have no bearing on the question whether the minerals removed from mine belonging to State under the directions of the officers to be used for the purposes of State, can amount to sale of goods in any sense by the removable of such goods to the owner of such goods ? Answer is evidently in the negative.

8. Accordingly these revision petitions fail and are hereby dismissed with no order as to costs.