(2005) 11 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision No''s. 412 and 413 of 2004

A.C.T.O. APPELLANT

Vs

Suncity Trade Agency RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 13A, 13A(2), 15, 2(18), 40

Citation : (2006) 147 STC 405

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant;

Judgement

Vineet Kothari, J.—Both these revision petitions are directed against the order of Tax Board dated June 17, 2003, whereby the Tax Board held setting aside the order of the Additional Commissioner u/s 40 of the Rajasthan Sales Tax Act, 1994 (for short, "the Act of 1994" hereinafter) that the words "exempted goods" as given in Section 13-A(2) of the Act of 1994, which excludes the turnover of exempted goods from the turnover liable to turnover tax levied u/s 13-A of the Act.

2. Section 13-A(2)(i) of the Act of 1994 reads as under:

(i) Sale or purchase of exempted goods ;

3. The term "exempted goods" has been defined in Section 2(18) of the Act of 1994, which reads as under:

(18) ''exempted goods'' means any goods exempted from tax in accordance with the provisions of this Act;

4. The power to exempt from levy of tax has been conferred upon the State Government in Section 15 of the Act, which is reproduced in extenso:

15. Exemption of tax.-Notwithstanding anything contained in this Act, where the

State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt fully or partially, whether prospectively or retrospectively from the tax the sale or purchase of any goods or class of goods or any person or class of persons, without any condition or with such condition as may be specified in the notification.

5. From the perusal of the above definition, it is clear that the State Government can exempt in public interest fully or partially, whether prospectively or retrospectively, whether conditionally or unconditionally sale or purchase of any goods or class of goods or any person or class of persons from tax. Thus, the power of State Government is almost unlimited to grant exemption from payment of tax. The notification in question by which exemption on sale of stainless steel flats, ingots and billets was granted, is notification No. S. O. 125 dated July 9, 1998, which is reproduced hereunder:

S. O. 125.-In exercise of the powers conferred by Section 15 of the Rajasthan Sales Tax Act, 1994, and in supersession of this Department Notification No. F.4(1)FD/Tax Div./97-108 dated March 12, 1997 (S. No. 1081), the State Government hereby exempts from tax the sale of stainless steel flats, ingots and billets, on the following conditions, namely:

1. that such stainless steel flats, ingots and billets are used as raw material in the manufacture of stainless steel sheets, patta within the State.

2. that such manufactured stainless steel sheets, patta are sold within the State or in the course of inter-State trade or commerce, and

3. that such manufacturer shall issue a declaration to this effect in form ST 17 appended to the Rajasthan Sales Tax Rules, 1995, to the selling dealer.

This notification shall remain in force up to March 31, 2000.

6. The Tax Board construing this notification, held that the sale or purchase of stainless steel flats, ingots and billets was exempted subject to specified conditions in the said notification and such goods exempted under the said notification fall within the definition of "exempted goods" as defined in Section 2(18) of the Act and therefore, the turnover relating to sale or purchase of these goods subject to fulfilment of the conditions specified in that notification was of exempted goods and therefore, such turnover could not form part of the turnover on which turnover tax is levied u/s 13-A of the Act in view of Section 13-A(2)(i) of the Act. The Tax Board has held that the words "exempted goods" as used in Section 13-A(2)(i) of the Act will have to be construed in the light of definition of "exempted goods" given u/s 2(18) of the Act, which means any goods exempted from tax in accordance with the provisions of this Act. The exemption from tax given under a notification issued in exercise of powers conferred u/s 15 of the Act would naturally mean that those goods are exempted in accordance with the provisions of this Act. Merely because, the exemption is conditional or is given

subject to fulfilment of certain conditions, it does not mean that such goods will fall outside the definition of "exempted goods". It is only subject to those conditions when fulfilled then the question of exemption would arise and only then, they will be said to be exempted goods. But, once such goods squarely come within the four corners of that notification. Thus, there is no doubt that turnover relating to those goods will be turnover of exempted goods and therefore, will fall within the ambit and scope of Section 13(2)(i) of the Act.

7. Therefore, the learned Tax Board has rightly reached to the conclusion that the turnover relating to sale of stainless steel flats, ingots and billets exempted under the said notification will also be entitled to exemption or exclusion u/s 13(2)(i) of the Act.

8. Consequently, I do not find any reason to interfere with or upset the said conclusion of the Tax Board. There is no force in the present revision. The same is accordingly, dismissed.