(2015) 05 RAJ CK 0226

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 117/2006

Acto S/C-II, Jodhpur APPELLANT

Vs

Baldgum Auto Industries (P) Ltd. RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0226

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Vinit Mathur, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

Vineet Kothari, J.—Heard learned counsels for the parties.

2. The petitioner-Revenue has challenged the order of the learned Tax Board dated 12/8/2002, whereby, the learned Tax Board has held that since the radiators are made up of copper, therefore, the same will be exempted from payment of tax over 1.5% in terms of the Notification dated 6/3/1991 and thus the appeal filed by the Revenue was dismissed by the learned Tax Board. The relevant portion of the Tax Board order is quoted below for ready reference:--

3. The Notification dated 6/3/1991 under which any product of copper has been exempted subject to certain conditions is also quoted below for ready reference:--

"S. No. 839 : F. 4(8) FD. Gr. IV/91-110 dated 6.3.1991 S.O. 343.--In exercise of the powers conferred by S. 4(2), RST Act, 1954, and in supersession of this deptt notfn No. F. 4(46) FD. Gr. IV/89-35 dated 27.6.1990 (S. No. 807), the State Govt. hereby with immediate effect, exempts from tax the sale of any product of copper to the extent to which the rate of tax in respect thereof exceeds 1.5% on the following conditions, namely;-

(1) that such copper is used as raw material in the manufacture of any other products of copper within the State of Rajasthan ;

(2) that such manufactured products of copper is 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 the Form ST 17 appended to the RST Rules, 1955 to the selling dealer."

4. Learned counsel for the respondent Assessee submitted that this Court in ACTO, Ward III, Circle ''C'', Jodhpur v. M/s. Gayatri Cables - SB Civil Sales Tax Revision No. 919/2003 decided on 19/7/2011 has held that the cable wires enameled are also copper product and, therefore, would be exempted from payment of tax over 1.5% in terms of the Notification dated 6/3/1991. Relevant extract of the said order is quoted below for ready reference:--

"The notification dated 06.03.1991 had clearly exempted from tax the sale of any product of copper provided it fulfills three conditions. For the purpose of this case, condition No. 1 is relevant which is that such copper is used as raw material in the manufacture of "any other products of copper" within the State of Rajasthan. According to the appellate authority, the assessee purchased the copper wires which were rolled, and the same were sued as a raw material. Further, the assessee had sold the super enameled copper wire to M/s. Meter & Instrument Ltd., Chandigarh for being used in meters. Therefore, the wires being produced by the assessee were nothing but "the product of copper", although the said product of copper was enameled and insulated. The learned appellate authority has also noticed that merely because the firms used the word cables in its firm names, the assessing authority was influenced by the use of the word "cables" and has wrongly concluded that the wires produced by the assessee were "cables or electric wires".

Considering the fact that the copper which were rolled were bought, considering the fact that they were insulated and enameled, nonetheless they continued to be "copper product". Therefore, they would fall within the exemption notification. Hence, the learned Board and learned Appellate Authority were fully justified in holding that the assessee would be entitled to the exemption under the said notification.

Moreover, since the nature of the product is a question of fact, no substantial question of law is involved in the present case. Furthermore, the said question of fact has been adjudicated upon both by the Appellate Authority and by the learned Board. Therefore, this Court should not interfere with the said finding of fact in its revisional jurisdiction."

5. Learned counsel for the respondent assessee, Mr. Sanjeev Johari further submitted that the Hon''ble Supreme Court in A. Nagaraju Bros., Visakhapatnam Vs. State of A.P., , which has also been relied upon by the learned Single Judge in the aforesaid order, applied the common parlance test in holding that the VIP Suitcases are plastic products though the value of steel including locks and other materials used in the suitcases is more than the value of plastics. The relevant extract of the said judgment is also quoted below for ready reference:--

"There is no single test of determining the class of a taxable goods. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new product, where this test may not be appropriate. In such ases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application. But so far as the goods concerned herein are concerned, these are undoubtedly plastic goods. Merely because the value of steel including locks and other materials used in the suitcases is more than the value of plastics, they cannot be called articles made of steel or of such other materials."

6. Learned counsel for the Revenue, Mr. Vinit Mathur was not in a position to controvert these submissions and, therefore, prima facie the controversy in the present case also appears to be covered by the aforesaid judgments and the learned Tax Board cannot be said to have committed any error in holding that the radiators being basically made of copper, therefore, in common parlance it would mean a product of copper and would fall under "any product of copper" and would be covered by the Notification dated 6/3/1991.

7. Accordingly, the present revision petition filed by the Revenue is found to be devoid of any merit and same is hereby dismissed.

