(2005) 02 RAJ CK 0005

In the Rajasthan High Court

Arihant Solvex Pvt. Ltd. APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:
Central Sales Tax Act, 1956 — Section 9

Citation : (2007) 10 VST 582

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The petitioner is aggrieved against the order dated March 10, 2003 (annexure 8) by which the Assistant Commissioner, Commercial Taxes Department, Special Circle, Bikaner issued notices to the petitioner under Sections 30 and 58 of the Rajasthan Sales Tax Act, 1994 (for short, "the RST Act") and u/s 9 of the Central Sales Tax Act, 1956 (for short, "the CST Act") on the premises that the petitioner availed the benefit of exemption of 75 per cent of tax whereas the petitioner was eligible to the extent of 60 per cent only.

3. According to the learned Counsel for the petitioner, the petitioner was granted exemption certificate by the competent authority, copy of which is placed on record as annexure 3. In this certificate, it is clearly mentioned that the percentage of exemption from tax liability shall be 75 per cent. Not only this, but there is a specific mention in the certificate that the petitioner shall deposit 25 per cent of the tax amount only. This certificate was issued on January 13, 1996.

4. According to learned Counsel for the petitioner, once a certificate is issued by the competent authority granting exemption, the taxing authority has no jurisdiction to take a different view than the relief granted in the exemption certificate.

5. Learned Counsel for the petitioner, though argued on other points also, but in view of the fact that the controversy appears to be covered by the decision of this Court delivered in the case of Laxmi Industries v. State of Rajasthan reported in [1995] 99 STC 584, I therefore, need not to mention all these grounds which appears to be more relating to the facts. This Court in this case observed as under (at page 586):

...If he (Commercial Taxes Officer) was aggrieved that a sanction has wrongly been issued in favour of the petitioner which is contrary to the scheme, his option was to have approached the District Level Screening Committee, who, if satisfied with the complaint of the Commercial Taxes Officer, could have taken appropriate proceedings by giving notice to the petitioner, if it was so permitted under the scheme. However, the Commercial Taxes Officer, respondent No. 3, could not have recourse to confer upon himself the jurisdiction to cancel the eligibility certificate granted to the petitioner on his opinion that it was wrongly granted....

6. This Court after observing as above, held that the issuance of notice was wholly without jurisdiction and cannot be sustained.

7. In view of the above, it is clear that a certificate which is issued by the District Level Screening Committee cannot be questioned by the Commercial Taxes Officer and the Taxing Authority without getting correction in the certificate by following appropriate procedure by approaching the Committee itself and could not have issued notice to the petitioner on assumption that the petitioner was entitled to 60 per cent exemption instead of 75 per cent exemption.

8. It is clear from annexure 3 that the Committee very specifically mentioned this fact in the exemption certificate itself that the petitioner was entitled to exemption from tax liability up to the extent of 75 per cent and clearly mentioned that the petitioner shall deposit 25 per cent of the tax. Therefore, the notice issued by the Assistant Commissioner (Commercial Taxes Department) Special Circle, Bikaner, is only against the exemption certificate and deserves to be quashed and set aside.

9. In view of the above discussion, this writ petition is allowed and the impugned notice annexure 8 is quashed and set aside.