(2011) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision No. 919 of 2003

Assistant Commercial Tax Officer — APPELLANT

Vs

Gayatri Cables — RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Citation : (2011) 45 VST 226

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Lokesh Mathur for V.K. Mathur, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

R.S. Chauhan, J.—The Revenue is aggrieved by the order dated October 28, 2002, passed by the Rajasthan Tax Board, Ajmer, whereby the learned Board has dismissed the appeal filed by the Revenue and upheld the order of the learned first appellate authority dated May 1, 2000. The brief facts of the case are that the assessee, M/s. Gayatri Cables, is carrying on a business of manufacturing of super enameled copper wire and insulated copper wire. For the purpose of manufacturing super enameled copper wire and insulated copper wire, it bought raw material (copper) on concessional rate at 1.5 percent as per notification dated March 6, 1991. The notification dated March 6, 1991 granted an exemption from the sale of any product of copper to the extent to which the rate of tax in respect thereof exceeds 1.5 percent on the conditions, namely, (1) 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 form ST-17 appended to the RST Rules, 1955 to the selling dealer. The assessing authority did not consider the product manufactured by the assessee as a copper product. According to the assessing authority, the assessee had produced enameled wire. Therefore, the product should be treated as "electric wire". Thus, the assessee could not take the benefit of the exemption. Hence, the different tax and interest to the tune of Rs. 6,479 and Rs. 4,276 totalling of Rs. 10,755 was imposed by the assessing authority upon the assessee vide order dated August 20, 1998.

2. Since the assessee was aggrieved by the said assessment order, it filed an appeal before the Divisional Commissioner (Appeals), Jodhpur. Vide order dated May 1, 2000, the learned appellate authority allowed the appeal and set aside the order dated August 20, 1998. Since the Revenue was aggrieved by the order dated May 1, 2000, it filed an appeal before the learned Board. However, vide order dated October 28, 2002, the learned Board rejected the appeal. Hence, this petition before this court.

3. Mr. Lokesh Mathur, the learned counsel for the Revenue, has vehemently contended that the assessee had bought copper and had produced the copper wire which were sold as electric wire. Therefore, the product should have been treated as electric wire. He has further contended that the copper does not change its nature; taken as raw material, the copper continues to be copper even after going through the manufacturing process. Therefore, the exemption could not be claimed by the assessee. In order to buttress this contention, the learned counsel has relied upon the cases of The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji, and A. Nagaraju Bros., Visakhapatnam Vs. State of A.P., .

4. On the other hand, Mr. Sanjeev Johari, the learned counsel for the respondent-assessee, has contended that according to the notification, the requirement is that copper should be used as a raw material and the product, after the process of manufacturing, should be a "product of copper". In the present case, admittedly, the assessee bought copper wires and converted them into enameled and insulated wires. Even these wires continued to be nothing but "copper wires", although enameled and insulated. Therefore, they continued "to he a product of copper". Hence, the assessee was entitled to claim the exemption. Since, it is finding of fact upon which two subordinate authorities have expressed their opinion, it does not deserve to be interfered with in the revisional jurisdiction of this court.

5. Heard the learned counsel for the parties and perused the impugned orders.

6. The notification dated March 6, 1991 had clearly exempted from tax the sale of any product of copper provided it fulfils 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 used 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 name, 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".

7. 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.

8. 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. Therefore, this petition is devoid of any merit; it is, hereby, dismissed.

