(2010) 10 RAJ CK 0050

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 16 of 2002

Assistant Commercial Taxes Officer — APPELLANT

Vs

Duzodwala Cement (P) Ltd. — RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Citation : (2011) 40 VST 348

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : A. Kaushik, for R.B. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the Petitioner. No one is present on behalf of the Respondent despite of service of notice of this petition.

2. The question involved in the present case is, "Whether packing material sold along with cement is subject to sales tax or not ?"

3. The sale of bags, which were sold along with cement, were separated by the assessing officer and tax was levied on the sale of bags, i.e., packing material and penalty was also levied. Being aggrieved with the same the Assessee challenged the action of the assessing officer before the appellate authority. The Deputy Commissioner (Appeals) vide its order dated October 21, 1997 set aside the assessment order. The Revenue challenged the order passed by the appellate authority before the Rajasthan Tax Board, Ajmer (hereinafter referred as, "the Tax Board"), but the same was also dismissed by the Tax Board vide order dated July 19, 2001, which has been impugned by the Revenue in this revision petition before this Court.

4. It is relevant to mention that the appellate authority, i.e., Deputy Commissioner (Appeals) as well as the Tax Board both have observed that the Department has failed to prove separate sale of bags, i.e., packing material,

wherein cement was filled in, therefore, no tax is leviable on the packing material.

5. The learned Counsel for the Petitioner/Revenue fairly and frankly conceded that the issue involved in the present revision petition has been decided against the Revenue by this Court in Udaipur Distillery Co. Ltd. v. Rajasthan Taxation Tribunal reported in (2003) 132 STC 489 and also by the honourable apex court in ACTO v. M. B. & Co. reported in (2002) 28 Tax World 494 and present case is fully covered by aforesaid decisions.

6. This Court in Udaipur Distillery Co. Ltd. Vs. Rajasthan Taxation Tribunal and Others, considered the composite sale of beer and Indian-made foreign liquor in bottles and held that there can be no presumption of sale of bottles separately.

7. Similarly, the honourable apex court in ACTO (2002) 28 Tax World 494 considered the fact that the assessing officer completed the assessment holding that only granite tiles sold are exempted under the Incentive Scheme and not the packing material. Assessing officer, accordingly, levied tax on sale of packing material treating it as an implied sale. However, the assessment order was set aside by the Deputy Commissioner (Appeals) as well as by the Tax Board. The revision petition filed by the Revenue was dismissed by the Rajasthan High Court. The honourable apex court affirmed the orders passed by the Deputy Commissioner (Appeals), Tax Board and High Court and held that packing material is not exigible to tax.

8. In view of the above discussions, it is clear that issue or legal question involved in the present revision petition has already been decided by this Court as well as the honourable Supreme Court in the cases referred above and present case is fully covered by aforesaid decisions. Therefore, there is no merit in this revision petition and the same is, accordingly, dismissed.