(2013) 07 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 431 of 2005

Assistant Commercial Taxes Officer — APPELLANT

Vs

Eagle Rubber Industries — RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 64 VST 510

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Dinesh Godara for V.K. Mathur, for the Appellant; Suresh Ojha, for the Respondent

Judgement

Arun Bhansali, J.—This revision petition u/s 86 of the Rajas than Sales Tax Act, 1994 ("the Act") has been filed against the order dated August 9, 2004 passed by the Rajasthan Tax Board, Ajmer ("Tax Board"), whereby, the appeal filed by the respondent has been partly allowed, by the tax board regarding assessment years 1989-90 and 1990-91 and the same has been dismissed qua assessment year 1991-92. The brief facts of the case are that the reassessment proceedings for the assessment years 1988-89 to 1991-92 was initiated against the respondent-assessee by the assessing officer ("AO") in exercise of the powers conferred u/s 12 of the Rajasthan Sales Tax Act, 1954, section 30 of the Rajasthan Sales Tax Act, 1994 read with section 9 of the Central Sales Tax Act, on March 11, 1996, which was served on the respondent-assessee on November 29, 1997; in response to the notice, a reply was submitted by the assessee by post seeking postponement of the hearing; the AO declined the prayer and framed the assessment for assessment years 1988-89 to 1991-92 vide assessment order dated December 5, 1997 and created a demand of Rs. 7,05,872.

2. Aggrieved by the assessment order, the respondent-assessee preferred an appeal before the Deputy Commissioner (Appeals) questioning the assessment as time-barred.

3. The appellate authority came to the conclusion that the assessing authority erred in law in passing a composite reassessment order for different assessment years 1988-89 and 1991-92 and, accordingly, remanded back the matter to the assessing authority with a direction to pass separate assessment order for the years 1988-89 to 1991-92.

4. The respondent-assessee approached the Tax Board and questioned the order of remand passed by the appellate authority as the assessment being time-barred and, therefore, there was no question of remanding back the matter to the assessing authority.

5. The learned Tax Board after hearing the parties came to the conclusion that the amendment in the provisions introduced in the year 1991 reducing the period of limitation from eight years to five years for issuing notice for reassessment would be applicable and held that the assessment proceedings for the assessment years 1989-90 and 1990-91 had become time-barred. It, however, upheld the remand for reassessment for the year 1991-92.

6. The learned counsel for the petitioner-Department submitted that the provisions as existing during the relevant assessment year shall only govern the limitation for issuing notice for reassessment and provision introduced subsequent to the relevant assessment year cannot govern the limitation for issuing notice for reassessment for the said years and, therefore, the notice issued by the assessing authority for reassessment u/s 12 of the Act of 1954/ section 30 of the Act of 1994 was within limitation.

7. On the other hand, learned counsel for the respondent submitted that the order impugned does not call for any interference as the same is based on the judgment of this court Assistant Commercial Taxes Officer Vs. Shrinath Emporium, . It was further submitted that even otherwise the basis on which the reassessment notice was given itself has been rendered meaningless in view of the amendment of the Incentive Scheme, 1987 vide notification dated April 11, 2007, whereby, the existing condition (i) of sub-clause (e) of clause 4 has been deleted retrospectively with effect from May 23, 1987 and, reliance in this regard, is placed on a judgment of this court in Agarwal Salt Company Vs. Additional Commissioner (VAT and I.T.) Commercial Taxes and Others,

8. I have considered the rival submissions made at the Bar.

9. The issue regarding applicability of the provisions regarding reassessment proceedings and its retrospectivity stand concluded by the judgment of this court in Assistant Commercial Taxes Officer Vs. Shrinath Emporium, wherein, this court held thus (pages 597 and 598 in 123 STC):

9. The question can be viewed from slightly different angle. Prescribing of period under the taxing statutes is usually not considered as law of repose. That is to say that for all times, in such cases law authority reopening of closed assessment is to looked as on the date power thereunder is to be exercised. It is not a case

for enforcement of right but it is a case of exercise of power by the authority designated under the relevant statute. When the officer takes recourse to the proceedings and exercises his power, it has to in accord with provision at the time the authority under the statute seeks to exercise power conferred by statute. It has to be in accordance of conditions under which such power can be exercised. There is no vested right, in any authority to exercise powers in future.

10. The court further on the facts of that case also found that the assessing authority had no jurisdiction for initiating proceedings for reassessment and the Tribunal was justified in setting aside the assessment. Further, in view of the judgment in the case of Agarwal Salt Company Vs. Additional Commissioner (VAT and I.T.) Commercial Taxes and Others, : Agarwal Salt Company Vs. Additional Commissioner (VAT and I.T.) Commercial Taxes and Others, cited by learned counsel for the respondent, the issue otherwise has also become academic. In view of the above, there is no substance in the revision petition and the same is, therefore, dismissed.

