(2005) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 444 of 2005

Assistant Commercial Taxes Officer — APPELLANT

Vs

Hemendra Industries — RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 86

Citation : (2006) 147 STC 351

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sangeeta Lodha, for the Appellant;

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 is directed against the order dated January 25, 2003 of the Rajasthan Tax Board dismissing the Revenue appeal and holding that if the part of manufacturing process of polishing of slabs and tiles of granite is undertaken by the assessee-unit outside the factory premises on job basis from some other industrial unit then, it cannot be said that the assessee unit is not entitled to the benefit of the exemption from the sales tax under the Incentive Scheme, 1987.

2. Learned assessing authority found for the year in question 1990-91 that in the job charges account, the assessee had spent a sum of Rs. 43,100 as payment towards job charges paid to the other industrial units which constituted 6.6 per cent of the value of the total production of the industrial unit and 23.37 per cent of the total cost of raw materials used by the assessee in question. According to the assessing authority, the industrial unit was not entitled to avail the benefit of exemption in respect of the goods so manufactured by it because if the part of process for manufacturing of such granite tiles took place outside the factory premises, it disentitle the industrial unit from availing the benefit of exemption under the Incentive Scheme in respect of such goods manufactured by it.

3. learned Counsel for the Revenue submits that in view of such part of process undertaken by the assessee unit outside the factory premises, the goods or granite tiles so manufactured cannot be construed to be goods manufactured by the industrial unit.

4. The first appeal of the assessee was allowed by the learned Deputy Commissioner (Appeals) and the second appeal before the Tax Board also failed and thus both the authorities concurrently found that despite such part of manufacturing process taking place outside the factory premises of the unit in question, the assessee unit could not be disentitled from availing the benefit of Incentive Scheme, 1987.

5. It is now well-settled and trite law that the benefit of exemption under the Incentive Scheme, 1987 is available and is granted to the industrial unit, who makes eligible fixed capital investment within the State of Rajasthan during the operative period of Incentive Scheme. The application for availing such exemption lies before the competent Screening Committees at district level or at State level depending upon the size of the industrial unit and after scrutiny of the applications, appropriate eligibility certificate is issued in favour of the unit for availing such benefit of exemption. The power to exemption and to revoke or modify that also thus lies with the competent Screening Committee and not with the assessing authority. Of course, the exemption from sales tax is available on the sale of goods manufactured by the industrial unit when they are sold within the State or in the course of inter-State trade but, the benefit of exemption is available to the industrial unit on the strength of eligible investment made by it.

6. Merely because on account of business expediency or necessity of time or due to any other reason like a part of such manufacturing facility may not be available with the industrial unit itself and it may be required to undertake such part of manufacturing process with the help of other industrial units but, the fact remains that such goods after completion of such manufacturing process when they are sold by the industrial unit are only the goods manufactured by them and sold by them, on which the question of exemption or taxability can arise. The industrial unit cannot be denied, in the considered opinion of this Court, the benefit of incentive under this Scheme even if the part of manufacturing process is required to be undertaken for aforesaid or other reasons outside the premises of the industrial unit itself and therefore, the learned appellate authorities below cannot be said to have committed any error in law in setting aside the assessment order and holding that the benefit of incentive cannot be denied to the industrial unit for this reason.

7. Consequently, I do not find any force in this revision petition. The same is accordingly dismissed.