(2000) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No''s. 577, 578 and 579 of 1999

Assistant Commercial Taxes Officer — APPELLANT

Vs

Mewar Welding Works — RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Citation : (2000) 119 STC 576

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johar, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—These three revisions are against the order of Rajasthan Tax Board dated August 17, 1998 in three appeals filed by the present petitioner. All the appeals have been dismissed by the common order of the Board holding the same to be infructuous.

2. The Board has noticed that by the order of the Deputy Commissioner (Appeals), Commercial Taxes Department, Udaipur, dated July 18, 1994, had allowed the appeals of the assessee and remanded the case back to the assessing officer for making fresh assessment orders. Aggrieved by the order of the Deputy Commissioner (Appeals), the petitioner preferred an appeal which was dismissed as having become infructuous, because in pursuance thereof the assessing officer has made fresh assessment orders.

3. Learned counsel for the Revenue had urged that Board has seriously erred in dismissing the appeals of the Revenue as having become infructuous, without considering the fact that the Deputy Commissioner (Appeals) has recorded the finding against the Revenue about the nature of the transaction conducted by the dealer on the basis of which assessment was made. It is that finding, that the assessing officer had challenged before the Board on merit. The fresh assessment orders in pursuance of the order of the Deputy Commissioner

(Appeals) was merely to give effect to that finding that the transaction in question were works contract. Independent finding has not been reached by the assessing officer, nor was he required to. Therefore, making of assessment on that basis cannot deprive the Revenue from challenging the finding of the Deputy Commissioner (Appeals) on the merits before the Board. The Board could not decline to decide that issue by resorting to short circuit the proceeding. The fact is that these appeals before the Board have not become infructuous by giving effect to directions of the Deputy Commissioner by the assessing officer. If that were so, it would be easiest to scuttle the remedy of the assessee against the orders made by the appellate authority by giving effect to it before the remedial proceedings are over. That cannot be countenanced.

4. Accordingly these petitions are allowed. The order of the Board holding the appeal pending before it has become infructuous in each case is set aside. The learned Board is directed to decide the appeals afresh in accordance with law on merits.

