(2014) 07 RAJ CK 0038

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 368 of 2011

Assistant Commercial Taxes Officer APPELLANT

Vs

Rohit Salt Industries RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Citation : (2014) 76 VST 489

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

Bench : Single Bench

Advocate : Dharampal Mahla, ACTO, Advocate for the Appellant

Judgement

R.S. Chauhan, J.—Upon a public notice being issued by this court, Mr. Dharampal Mahla, ACTO, appears in person. The petitioner has challenged the judgment dated November 1, 2004 passed by the Rajasthan Tax Board, Ajmer, whereby the learned Board has dismissed the appeal filed by the petitioner, and has confirmed the order passed by the Deputy Commissioner (Appeals) dated December 10, 2002.

2. The brief facts of the case are that the respondent-assessee is a registered dealer in the trade of salt. The assessee purchased the salt and by grinding and iodizing the same, packed the same in plastic bags. The assessee has purchased the packing material, i.e., plastic bags, on declaration form ST-17 without payment of tax, and had further sold the salt in such bags without payment of any sales tax in regard to price of the bags. While furnishing the returns for the years 1998-99 and 1999-2000 in self-assessment proceedings under section 29(4) of the Rajasthan Sales Tax Act ("the Act", for short), the assessee did not furnish any detail with regard to purchase of packing material on declaration form ST-17. When assessment of the year 2000-01 was made by the assessing authority under section 29(6) of the Act, the assessing authority found that the assessee by not declaring the packing material purchased under declaration form ST-17, has misused the declaration form. Accordingly, the assessing authority levied purchase tax under section 11 of the Act on packing material brought on

declaration form ST-17. He further levied interest under section 58 of the Act, and penalty under section 65 of the Act. Therefore, by assessment order dated August 23, 2002, the assessing authority assessed the sales tax as Rs. 7,724 for the assessment year 1998-99, and imposed an interest of Rs. 6,797 and a penalty of Rs. 15,448.

3. Since the assessee was aggrieved by the order dated August 23, 2002, it filed an appeal before the Deputy Commissioner (Appeals). By order dated December 10, 2002, the Deputy Commissioner (Appeals) allowed the appeal, and set aside the order dated August 23, 2002. Since the petitioner was aggrieved by the said order, it filed an appeal under section 85 of the Act before the learned Board. However, by judgment dated November 1, 2004, the learned Board dismissed the appeal filed by the petitioner and confirmed the order passed by the Deputy Commissioner (Appeal). Hence, this petition before this court.

4. Mr. Dharampal Mahla, the ACTO, has pleaded that once an assurance was given by the assessee while purchasing the plastic bags that he will pay the tax, he could not have hidden the tact from declaration under ST-17. Therefore, it was liable to pay the tax on sale of plastic bags.

5. The position being taken by Mr. Mahla is clearly contrary to Explanation-I to section 4(2) of the Act as well as to the notification dated March 6, 1978 issued by the State Government. According to the said notification, tax payable under sub-section (1) and clause (b) of sub-section (2) of section 8, packing material sold along with the goods when not separately charged in the course of inter-State sale, the tax on the same would be liable to be calculated at the same rate as is applicable to sale in the course of inter-State sale of goods packed therein. Since salt is not subjected to any sales tax, the packing material in which salt is being packed is not equally subjected to levy of tax in view of Explanation I to section 30(8) read with section 4(2) of the Act.

6. Although the learned Board has dismissed the appeal, inter alia, on the ground that once an assessment has been made under section 29 of the Act, merely by change of mind the assessing authority could not re-assess under section 30. But even then the logic given by the Deputy Commissioner (Appeals) would hold water. Thus, this court does not find that any question of law arises in this petition. Consequently, this petition being devoid of any merit is hereby, dismissed. The stay application also stands dismissed.

