(1999) 12 RAJ CK 0016

In the Rajasthan High Court

Case No : Sales Tax Revision No. 465 of 1999

Assistant Commercial Taxes Officer — APPELLANT

Vs

Shakti Scoring and Milling Mills — RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 11B(1), 5(1)

Citation : (2001) 121 STC 36

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; J.L. Purohit, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—This sales tax revision petition was filed by the Assistant Commercial Taxes Officer relates to the period of assessment ending on March 31, 1987 and March 31, 1988 respectively.

2. The assessee is engaged in the business of doing job-work. In the original assessment the price of the packing material, which was used by the assessee, which was not purchased by the assessee as a tax-paid goods, was not brought to the tax under the provision of the Act, therefore the reassessment proceedings were initiated. As a result of reassessment for the period ending on March 31, 1987, the packing material which was purchased without payment of tax was valued at Rs. 1,44,413 and for the period ending on March 31, 1988 it was valued at Rs. 1,38,875, totalling Rs. 2,83,288 which had been used in doing the job-work but was not separately shown and for which no separate amount as price was charged. The assessing officer levied sales tax on the said amount by treating it to be sale of packing material. Tax at 4 per cent and surcharge on this additional amount, was quantified and interest amounting to Rs. 15,877 u/s 11-B also levied. The Deputy Commissioner, by finding that the total value of the goods used in the works contract was less than 15 per cent of the total value of the works, held that no tax was payable as per notification dated November 7,

1988. The amount of tax was deleted. Accordingly the interest was also deleted. The order of the Deputy Commissioner was affirmed by the Rajasthan Taxation Board vide its order dated October 9, 1988 along with two other appeals, by relying on the notification dated November 7, 1988.

3. Two contentions have been raised by the learned counsel for the Revenue. The first contention is that the packing material is liable to be taxed with aid, of proviso to Section 5(1) of the Rajasthan Sales Tax Act, 1954 and secondly that the notification dated November 7, 1988 cannot be used in aid by the respondent-assessee for the period falling before March 31, 1988.

4. So far as the first contention is concerned it is to be noticed that the proviso to Section 5(1) to which reference has been made, was not in operation for the period in question and assessing officer has not brought the amount of tax by invoking said proviso. The question of applicability of the proviso do not arise for consideration in these proceedings.

5. So far as the second contention is concerned there is merit in the contention of the learned counsel for Revenue inasmuch as the notification dated November 7, 1988 granting exemption from taxation if the value of the goods involved in the works contract is less than 15 per cent of the total value of work, was not brought into force retrospectively. The notification dated November 7, 1988 could not apply to transaction completed by that date. Learned counsel for the respondent has not been able to place any material to suggest that prior to said notification dated November 7, 1988 there was any such exemption prevalent where ratio of value of goods involved in execution of work vis-a-vis the full value of works contract was below particular level of percentage, then the value of such goods used in execution of works was exempted from payment of tax. In view of this it must be held that Rajasthan Tax Board as well as Deputy Commissioner of Commercial Taxes (Appeals) was not right in giving the assessee benefit of notification dated November 7, 1988.

6. However, before examining the question of taxability of packing material it has to be established as a fact whether packing material has been used as essential part of execution of work or was a service rendered post-execution of works. In the event of first contingency it may be subjected to that as value of goods used in execution of works contracts, subject to any notification in that regard. However, in such event rate of tax shall be such as governs the tax on goods used in execution of works and not separately. In the latter contingency it will have to be established as a matter of fact before levy of tax, whether any sale of packing material was involved in the transaction. Only in such event tax can be levied on the consideration attributable to such sale. No such enquiry appears to have been made. The matter must go back to decision afresh in accordance with law to assessing authority for proper fact finding. Accordingly it is so directed.

7. Learned counsel for the respondent urged that in view of decision in Obviously the case relates to Commercial Taxes Officer Vs. Nalwaya Minerals and Motor

Parts, --Ed. Nalvaya Minerals v. Commercial Taxes Officer [1989] 4 STC 99 (SC) ; no interest is leviable for the period prior to April 1, 1987 u/s 11B(1)(f), this Court in Sales Tax Revision No. 11 of 1983 and 11 of 1989 has referred the question, when tax is quantified in u/s 12 after April 1, 1987 though for the period prior to April 1, 1987, whether the additional amount of tax is liable to interest u/s 11B(1)(f) of the Act to a larger Bench for decision.

8. In the aforesaid circumstances the question of levy of interest in the present case shall abide by decision that may be reached by the larger Bench of the court on such reference.

9. This civil revision stands accordingly allowed, the orders of appellate authorities are set aside and the case is remanded to assessing officer to make a fresh order in accordance with law in the light of direction stated above.

