(2013) 12 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision Petition No''s. 229, 265, 410 and 412 of 2005

Assistant Commercial Taxes Officer, Ward-II APPELLANT

Vs

Mehta Opticians RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 81

Citation : (2014) 43 GST 527

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : V.K. Mathur and D.K. Godara, for the Appellant;

Judgement

Arun Bhansali, J.—These revision petitions are directed against the judgment dated 26.4.2004 passed by the Rajasthan Tax Board, Ajmer (Tax Board''), whereby the appeals filed by the petitioner against the order dated 30.8.2002 passed by the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur were rejected. Despite notice, no one has appeared on behalf of the respondent.

2. The facts in brief may be noticed thus: the respondents-Dealers are, inter alia, engaged in manufacture and sale of frames, glasses and spectacles. In the returns filed by the respondents in prescribed form, the total sales were shown as exemption from tax and therefore, a notice u/s 29(7) read with Section 81 of the Rajasthan Sales Tax Act, 1994 (''the Act'') was issued to the assessee by the Assessing Authority to show cause as to why the sales shown to be exempted from payment of tax, which includes the sale of frames and lenses imported from outside the State may not be taxed.

3. After consideration of the contentions raised on behalf of the dealers, the Assessing Authority assessed the liability of tax on frames and glasses; charged interest and imposed penalty by its assessment orders.

4. The appeals were preferred by the assessee before the Deputy Commissioner

(Appeals), who relying on the judgment of this Court in Mehta Opticians v. ACTO (S.B. Civil Sales Tax Revision Petition No. 447 of 1993, dated 16.5.1994) and the order passed in the review petition dated 21.4.2009 arising out of the order dated 16.5.1994, came to the conclusion that the order passed in the review, whereby para 5 of the judgment was deleted did not alter the purport of the judgment dated 16.5.1994 and therefore, accepted the appeals preferred by the respondents-dealer and set aside the assessment orders.

5. Feeling aggrieved the department approached the Tax Board, who by the impugned order upheld the order passed by the Deputy Commissioner (Appeals) and dismissed the appeals filed by the petitioner.

6. It is contented by learned counsel for the petitioner that the Deputy Commissioner (Appeals) and the Tax Board clearly fell in error in coming to the conclusion that the frames and glasses used by the respondent-Dealer in preparation of the spectacles sold to the customer were exempted from the tax by virtue of the judgment of this Court in Mehta Optician''s case (supra) though the same stood modified by the order passed in review dated 21.4.1999.

7. It was further submitted that the above aspect has been considered by this Court in: ACTO v. Mehta Opticians (S.B. Sales Tax Revision Petition No. 202/2002, dated 26.2.2007) and this Court taking into consideration the judgment dated 16.5.1994 passed in the case of Mehta Opticians (supra) and order dated 21.4.1999 passed in the review petition and the order of Hon''ble Supreme Court, whereby the judgment dated 16.5.1994 was upheld, has come to the conclusion that the tax is leviable on sale of glasses and frames even if they are sold in the form of spectacles and has remanded the matter to the Assessing Authority and therefore, the order impugned passed by the Tax Board deserves to be set- aside and the matters be remanded back to the assessing authority.

8. I have considered the submissions and have gone through the record of the revision petitions as well as judgment dated 26.2.2007 passed by this Court in the case of Mehta Opticians (supra).

9. The judgment of this Court in the case of Mehta Opticians (supra) dated 26.2.2007 applies on all fours to the present revision petitions.

10. This Court after considering the entire issue came to the following conclusion:-

In view of the above, two things are clear that tax is leviable on sale of glasses and frames even if they are sold in the form of spects and second is whether the assessee has paid the tax on such sale is a question of fact and that factual enquiry can be conducted only by the Assessing Authority to find out whether the assessee has paid the tax on glasses and frames which used in the spects and sold by the assessee.

In view of the above, all the revision petitions are allowed. The impugned orders of the Tax Board are set aside and the matter is remanded to the Assessing Authority who may hold an enquiry about the tax liability of the petitioner in relation to the commodities sold by the assessee by fixing the glasses in frames and treating the spects themselves as not a new commodity but treating the glasses and frames used in the preparation of the spects as taxable commodity. The parties shall appears before the Assessing Authority on 9.4.2007.

11. Consequently, these revision petitions are allowed for the same reasons as indicated in the judgment of this Court of Mehta Opticians dated 26.2.2007 (supra). The impugned orders of the Tax Board are set aside and the matters are remanded to the Assessing Authority, who may hold an enquiry about the tax liability of the respondents in relation to the commodities sold by the assessee by fixing the glasses in frames and treating the spectacles themselves as not new commodity but treating the glasses and frames used in the preparation of the spectacles as taxable commodity. No Costs.

