(2013) 07 RAJ CK 0207

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 250 of 2008

Assistant Commissioner, Anti-Evasion, Rajasthan-I — APPELLANT

Vs

Godrej G.E. Appliances — RESPONDENT

Date of Decision : 02-07-2013

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

Citation : (2014) 43 GST 89

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant;

Judgement

J.K. Ranka, J.—This revision petition has been filed by the petitioner department, u/s 86 of the Rajasthan Tax Act, 1994 (In short "The Act") against the order dated 2.4.2007 passed by the Rajasthan Sales Tax Board, Ajmer (in short "The Board") in Appeal No. 1523/2006 whereby the Tax Board rejected the appeal filed by the petitioner department. The brief facts of the case are that the respondent is a limited Company and is in the business of Refrigerators. As per separate contract of warranty the respondent charged "Optional Service Charges" Rs. 175/- per refrigerator from the consumers for providing after sale services in respect of refrigerator sold by the respondent, this Scheme was only optional and not necessarily every customer used to agree to this. It was claimed by the respondent-assessee that "optional Service Charges" charged by the respondent is not a part of the sale price and accordingly, no sales tax could be levied treating it as part of and including in the sale price however, the Assessing Officer, (in short "The AO") was not satisfied with the explanation so offered by the respondent-assessee and was of the view that since, the optional service charge is part of sale price and it has to be included in the sale price, accordingly, an amount of Rs. 45,28,232/- was treated as sale and accordingly levied tax @ 16% on it which came to Rs. 7,24,517/- interest and penalty was also levied on it.

2. Dis-satisfied with the order passed by the AO the respondent Company preferred an appeal before the Deputy Commissioner (Appeals), Jaipur, (In short (DC (A)), who after going through the order passed by the AO and also in the light of the Judgment in the case of respondent-assessee, itself, of the Tax Board, partly allowed the appeal of the appellant and directed to reduce optional service charges from sales and consequently directed to delete interest and penalty.

3. Being dis-satisfied with the order of DC (A), the petitioner-department, carried the matter in appeal before the Tax Board, who vide order dated 2.4.2007 rejected the appeal of the petitioner department. Accordingly, it was held that ''Optional Service Charge'' is not part of the sale price.

4. Hence, this revision petition.

5. Mr. R.B. Mathur, learned counsel for the petitioner department submitted that the "optional service charge" cannot be said to be a separate charge and it has to be treated as part of the sale price. According to him, the AO was quite justified in holding it as sale. He further submitted that it was charged from every consumer and there was no option with the consumer not to opt for it and accordingly it has to be held that sales tax was leviable on it. However, learned counsel for the petitioner fairly conceded that this issue has come up for consideration in between the same parties and in the case of respondent-assessee, and other cases and this Court has come to the conclusion that optional service charge is not to be included in the sale price and no sales tax is leviable on the same.

6. I have considered the arguments advanced by the learned counsel appearing on behalf of the petitioner-department and perused the impugned orders passed by the lower Appellate Authorities and after perusal of the impugned order passed by the Tax Board, it is apparent that in the case of respondent-assessee itself, the Tax Board has decided the issue involved in this case, which also came up before this Court in several cases and this Court in the case of Commercial Taxes Officer v. Whirlpool India Ltd. [SB Sales Tax Revision Petition No. 354/2011] and also in Commercial Taxes Officer v. Whirlpool India Ltd [SB Sales Tax Revision Petition No. 9/2008 decided on 16th July, 2012] held as under:-

In my considered opinion, there was enough material before Tax Board to hold that the charge levied by the Assessee towards service/warranty charges at the time of the sale was not universal but optional. Following this finding the legal consequences would be inexorable and entail exclusion of such charges from the ambit of sale price of the goods sold exigible to tax in view of the judgments of this Court in the case of Commercial Taxes Officer Vs. Godrej G.E. as also Commercial Taxes Officer v. Weston Electronics Ltd. [1992] 87 STC 522 (Raj.).

I find in the facts obtaining in the two revision petitions before me that the impugned orders of Rajasthan Tax Board are sound and able judgments on facts and law obtaining. It would also be relevant to note that the Rajasthan Tax Board had decided five appeals in favour of the respondent Assessee by a common order dated 5th December, 2002. Mr. Mathur, has admitted to the fact that revisions against three of the said appeals were dismissed for non-prosecution by this Court as early as 2008, of which in one revision petition a restoration application has been filed and is still pending. In respect of the other two revisions, the orders of the Tax Board have attained finality. It is thus evident that the department itself has accepted the legal positions enunciated by the Rajasthan Tax Board in at least two other connected appeals with an identical legal question involved.

7. Thereafter, this Court again in the case of Commercial Taxes Officer v. Whirlpool India Ltd. [SB Sales Tax Revision Petition No. 284/2011 decided on 4.4.2013] came to the same conclusion. This Court also on the similar facts in the case of Asstt. Commercial Taxes Officer v. Electrolux Kelvinator Ltd. [SB Sales Tax Revision Petition No. 361/2011 decided on 12.2.2013] again came to the same conclusion. This Court further in the case of Commercial Taxes Officer v. Godrej GE Appliances Ltd. [SB Sales Tax Revision Petition No. 282/2011, decided on 29.5.2013] also came to the same conclusion.

8. In view of the aforesaid facts and circumstances of the case and the Judgments of this Court on the same and identical issue in between the same parties as well, I am of the view that since the issue involved in the instant case has already been settled and decided, no substantial questions of law arises. Resultantly, the instant petition has no force and the same is dismissed. The stay application stands dismissed.