(2008) 12 RAJ CK 0009

In the Rajasthan High Court

Assistant Commissioner APPELLANT

Vs

H.E.G. Limited, Rishav Textiles RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 13A

Citation : (2009) 12 Vat Reporter 1

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard the learned Counsel for the parties.

2. The only question which arises for consideration by this Court in the present revision petition filed by the Revenue is as to whether the exemption fee prescribed under the notification No. F.4(4)FD/Tax Div/99-pt-59 dated 28.6.2003 [S. No. 1768 of part II of the book-2003 edn by J.K Jain & Prasoon Jain] for availing exemption from turnover tax u/s 13A of the RST Act, can be computed on the basis of annual gross turnover including the components like turnover representing Branch Transfer or Consignment Transfer or Inter-State Sales or Sale made in the course of export by the respondent-assessee which are not taxable under the RST Act, 1954.

3. For the purpose of interpretation of these terms, the relevant provisions of Section 15 and the notfn dated 28.6.2003 in question are reproduced hereunder for ready reference:

15. Exemption of tax.-Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may by nottn in the Official Gazette exempt fully or partially, whether prospectively or retrospectively from tax the sale or purchase of any goods or class of goods or any person or class of persons, without any condition or with such condition as may specified in the notification.

S. No. 1768 : F.4(4) FD/Tax Div/99-pt-59 dated 28.6.2003

In exercise of the powers conferred by Section 15, RST Act, 1994 and in supersession of this department notfn No. F.4(30)FD/Tax Div/2002-167 dated 22.3.2002 (as amended from time to time) [S. No. 1555], the State Govt. being of the opinion that it is expedient in the public interest so to do, hereby exempts a dealer other than the registered dealers of petrol, diesel, super kerosene oil (SKO) and the liquefied petroleum gas (LPG), liable to pay turnover tax u/s 13A of the said Act from payment of such tax on the following conditions namely:

(1). That such dealer undertakes to pay exemption fee as per the following table:

Item No.	Annual Gross Turnover during the relevant year	Annual Exemption Fee Payable
1.	Upto Rs. 30 lac	Nil
2.	Rs. 3000001/- to Rs. 5000000	Rs. 1,500/-
3.	Rs. 5000001/- to Rs. 10000000	Rs. 4,500/-
4.	Rs. 10000001/- to Rs. 30000000	Rs. 7,200/-
5.	Rs. 30000001/- to Rs. 50000000	Rs. 18,000/-
6.	Rs. 50000001/- to Rs. 100000000	Rs. 36,000/-
7.	Rs. 100000001/- to Rs. 1500000000	Rs. 54,000/-
8.	Rs. 150000001/- to Rs. 2500000000	Rs. 90,000/-
9.	Rs. 250000001/- to Rs. 3500000000	Rs. 1,26,000/-
10.	Rs. 350000001/- to Rs. 5000000000	Rs. 1,80,000/-
11.	Rs. 500000001/- to Rs. 7500000000	Rs. 2,70,000/-
12.	Rs. 750000001 /- to Rs. 1000000000	Rs. 3,60,000/-
13.	Rs. 1000000001/- to Rs. 2500000000	Rs. 5,40,000/-
14.	Rs. 250000001/- to Rs. 50000000000	Rs. 9,00,000/-
15.	Rs. 750000001/- to Rs. 10000000000	Rs. 13,50,000/-
16.	Rs. 10000000001/- and above	Rs. 60,00,000/-

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(2). An existing registered dealer opting for the exemption fee under this notfn shall submit an application on a plain paper, to his assessing authority within 30 days of the commencement of the year. However, for the Year 2003-04, such application may be submitted within 30 days of the date of publication of this notification.

(3).In case of commencement of a new business, such application shall be submitted within 30 days of commencement of the business.

(4).That such exemption fee is required to be paid in four quarterly installments. The installment for the period 1st April to 30th June; shall be paid by annualizing the Turnover, by 31St July; for the period July 1st to September 30"'' by 31St October; for the period October 1st to December 31st by 31St January and for the quarter 1st January to 31st March being last period of the year on the actual turnover of whole of the year, after adjusting the exemption fee deposited in the first three quarter of the year by April 30th of the immediately succeeding year.

(5). In case a dealer has deposited Exemption fee the year 2003-04 by increasing the Exemption Fee of the immediately preceding year by ten percent, the same shall be adjusted against the exemption fee payable under condition 4.

6. That the dealer opting for the exemption fee, shall not charge or collect turnover tax under the Act.

4. The learned Counsel for the Revenue Rishabh Sancheti appearing for V.K. Mathur urged that the term "Annual Gross turnover" includes all kinds of turnover including the turnover which may not be taxable under the Act or under the provisions of Section 13A of the Act providing for levy of turnover tax because that is just to be referred for computing annual exemption fee which is not levy of tax itself and even though the State may not be competent to levy tax on components like branch transfers, inter-State sales or export turnover, still for the purpose of levy of exemption fee under the said notification, the annual gross turnover can include all these components and, therefore, the tax Board as well as the first appellate Authority erred in holding otherwise and the AA wise right in including these components for the purpose of computation of exemption fee in lieu of turnover tax u/s 13A of the Act. Emphasizing on Section 15 of the Act, the learned Counsel submitted that firstly power to exempt is with non-obstante clause in Section 15 of Act and secondly the State has discretion to impose such condition or conditions as may be prescribed in the notification for granting exemption from tax on the sale or purchase of any goods or class of goods. He submitted that the levy of exemption fee in lieu of turnover tax is for convenience of the Department as well as the Assessee and it avoids hassles and harassment of the assessment procedure and therefore, while it is optional for the assessee to go in for the mode of payment of tax on each transaction and getting the same assessed or to opt for exemption certificate on payment of exemption fee in terms of aforesaid notification. Once having opted that channel,

the assessee cannot raise a grudge against the levy of exemption fee on the basis of annual gross turnover including all the components of turnover which are not even taxable under the Act itself.

5. On the side opposite Mr. Ramit Mehta, learned Counsel appearing for the respondent-Assessee submitted that power to exempt pre-supposes and envisages taxability of the turnover itself. What the State can exempt is what is taxable under the Act. Explaining his argument, he submitted that branch transfer or inter-State sales or export turnover cannot be taxed by the State Government at all on account of constitutional restriction contained in Article 286 of the Constitution of India. He submitted that what cannot be taxed cannot be exempted by the State Government. Therefore, question of levy of exemption fee on these kinds of turnover cannot arise because they are not taxable in the first instance. He relied upon the decision of Karnataka High Court in the case of Surfa Coats Pvt. Limited v. Dy. Commissioner of Commercial Taxes (1999) 115 STC 157 wherein the learned single Judge of Karnataka High Court dealing with the provisions of Section 6-B of the Karnataka sales Tax Act, 1957 held that stock transfer to branch was not sale and therefore, was not liable to turnover tax and thus, the same cannot be included within the ambit and scope of "total turnover" as defined in Section 2(1)(u-2) of the said Act. The learned Counsel for the respondent supported his argument further by relying upon the decision of the Hon''ble Supreme Court in the case of 20th Century Finance Corporation Limited v. State of Maharashtra (2000) 119 STC 182, wherein delineating the legislative powers of the State Legislature while dealing with the issue of levy of tax on the transfer of the right to use any goods, the Hon''ble Supreme Court held that because of the restriction imposed in Article 286(1) of the constitution of India, the State Legislature are not competent to enact law imposing tax on transactions of transfer of right to use any goods which take place in the course of inter-State trade or commerce. That by virtue of Article 286(1) under which the state Legislature is precluded from making a law imposing tax on the transactions of transfer of right to use any goods where such deemed sales take places (a) outside the State and (b) in the course of import of goods into the territory of India. The learned Counsel for the respondent further contended that the State Legislature could not go beyond the parameters of legislative powers as defined by the constitutional provisions while prescribing exemption fee under the subordinated legislation in the form of notification in question quoted above.

6. Having heard the learned Counsels and given thoughtful consideration to the controversy, this Court finds considerable force in the submissions made by the learned Counsel for the respondent-assessee. It is true that the notification dated 28.6.2003 provides for exemption fee on the basis of slabs of Annual Gross Turnover during the relevant year in column 2 of the said notification and column 3 provides for annual exemption fee and the fees goes on increasing with increasing slabs of annual gross turnover, but the question is the term "annual gross turnover" itself is not defined in the Act itself as such, therefore, one has to necessarily fall upon the definition of "turnover" and "taxable turnover" as

defined in Section 2(44) and 2(42) respectively. The said definitions are also reproduced hereunder for ready reference:

(44) "Turnover" means the aggregate amount received or receivable by a dealer for sales as referred to in Clause (38) including the purchase price of the goods which are subject to purchase tax u/s 11 of the Act.

(42) "Taxable turnover" means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods:

(i) on which no tax is leviable under this Act;

(ii) which have been exempted from tax or which have suffered tax under this Act, subject to other provisions in the Act; and

(iii) which are taxable at a point of sale within the state subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provisions of this Act or the rules made thereunder.

7. There is no need to over-emphasize that the RST Act, 1994 has been enacted under the legislative powers conferred upon the State in Entry 54 List II of 7th Schedule to the Constitution of India and has to abide by the parameters of taxability provided in the constitution of India read with various relevant Articles, like Article 269, 286 and 265 of the Constitution of India. The State Legislature has no legislative competence to impose tax under this RST Act on a transaction like interstate sales, export sale or branch transfers. This issue is really not disputed by the Revenue and rightly so. Once the power to tax itself is held to he limited or defined under the Act itself the power to exempt contained in Section 15 cannot fly outside the said scope and ambit of the Act. The non-obstanle clause of Section 15 does not give unbridled or unrestricted power to the State to exempt any goods or transaction taxable under the Act subject to a condition which envisages inclusion of non-taxable turnover within the definition of annual gross turnover used as basis for computing exemption fee.

The power to exempt necessarily presupposes power to tax. What cannot be taxed, cannot be exempted by the State. No exemption is required to be granted by the State to a transaction or upon goods which are simply not taxable under the provisions of the Act itself. Thus, exigibility to tax is sine qua non for invoking power to exempt any particular transaction or goods. Therefore, the contention of the learned Counsel for the petitioner-Revenue that the non-obstante clause could support the interpretation canvassed by the learned Counsel for the Revenue does not cut any ice. The term "Annual Gross Turnover during the relevant year" therefore, has to be read in the context of taxable turnover as defined in Section 2(42) of the Act and as envisaged to be taxed u/s 13A of the Act incorporated for the purpose of imposition of turnover tax under this Act. The term ''annual gross turnover'' as used in the said notification, therefore, could not include within its ambit the components of turnover like branch transfers, export sales and inter-State sales as contended by the learned Counsel for the petitioner-Revenue. The question posed in the present revision petition deserves to be answered in favour of the respondent-assessee and accordingly it is held that the AA was not justified in imposing or computing the exemption fee under the notfn dated. 28.6.2003 on the basis of annual gross turnover including therein the turnover representing branch transfers, consignment transfers, inter-State sales or export sale made by the assessed during the relevant year. The assessing authority is therefore, directed to recompute the exemption fee excluding these components from the annual gross turnover and refund excess exemption fees, if any collected from the respondent-assessee with interest @ 12% p. a. from the date of collection till the date of refund, within a period of two months from today.

8. As far as other question relating to levy of concessional rate of tax @ 3% on the diesel is concerned, that question already stands concluded against the petitioner-Revenue by the Apex Court decision in the case of Rajasthan Taxchem Ltd. v. Commercial Taxation Officer (2007) 7 Vat R 27 (SC) and also various decisions of this Court and that issue is thus, liable to be decided against the petitioner-Revenue. As far as third question of packing material is concerned, since the matter has been remanded back by the appellate authority to the AA, the same deserves to be left open till the issue is decided by the AA.

9. Consequently, these revision petitions of the Revenue are dismissed. No order as to costs.

