(2000) 01 RAJ CK 0015

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No''s. 636, 643, 649 and 650 of 1999

Assistant Commissioner APPELLANT

Vs

Karya Palak Engineer RESPONDENT

Date of Decision : 10-01-2000

Acts Referred:

Constitution of India, 1950 — Article 265, 285(1)
Rajasthan Sales Tax Act, 1954 — Section 16(1), 21

Citation : (2006) 143 STC 663

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—These four revisions raise an identical question arising out of the common order dated July 15, 1996, passed in respect of different assessment periods by the Rajasthan Tax Board, Ajmer, in the appeals filed by the Assistant Commercial Taxes Officer, Anti-Evasion, Bikaner, against the order passed by the Deputy Commissioner (Appeals), by which he has set aside the penalty levied u/s 16(1)(i) of the Rajasthan Sales Tax Act of 1954.

2. The facts giving rise to these revisions are that the respondent which is a department of Union of India, viz., the Central Public Works Department, supplies material to its contractors for the purpose of execution of contracts for it. While the respondent-assessee is claiming that such supplies are not sales and value of goods cannot be included in the "taxable turnover" by the department, the contention of the Revenue is that such supplies are sale. In the facts and circumstances of the case, the assessee by not returning such "turnover" for the purpose of tax on sale or purchase of books and not maintaining accounts register required u/s 21 has levied penalty at the rate of tax and also levied interest thereon (sic). Accordingly the assessing officer has imposed penalty u/s 16(1)(i). The Deputy Commissioner (Appeals) found that it is not a case of

concealment for the stand taken by the assessee on a debatable issue cannot be said to be not bona fide and unjustified. Lack of mens rea was found for the purpose of sustaining penalty for concealment of such transactions on the part of the assessee. That order has been affirmed by the Board.

3. During the course of hearing it has been pointed out, while making a request for deferring hearing of these matters on the ground that question is pending consideration before the Supreme Court and further hearing of the matter has been stayed. The order of the Supreme Court made in transfer application submitted by Union of India v. State of Rajasthan was placed for perusal of the court. In my opinion in all matters pending before this Court where issue raised about the taxability of such supplies of sales and other materials to the contractors by the Government department only is stayed. The order of the Supreme Court on Application Nos. 99 to 107 of 1995 passed on April 3, 1995 reads as under :

In view of the pendency of certain matters in this Court in which the same point is involved for decision, it would be appropriate that the matter pending in the High Court on the same point be kept pending in the High Court to await the decision of this Court thereon. The learned Additional Solicitor-General pointed out that the High Court has actually stayed certain demands and assessment for this very reason. It would, therefore, be appropriate that petitioner applies to the High Court for staying further proceedings in the pending matters there to await the decision of this Court.

With these observations these transfer petitions are dismissed.

4. The transfer petitions disclose that it has been made on the ground that the identical questions raised in petitions before Rajasthan High Court were pending consideration before the Supreme Court. The identical questions with reference to which hearing of the petitions are pending before the court and for which the petitions were required to be transferred to the Supreme Court are stated as under :

(i) whether the State of Orissa is competent to levy any sales tax in respect of steel and cement supplied by the Telecom Civil Stores to the contractors for construction of departmental building ;

(ii) whether the sovereign functions of the State is inexigible to any of sales tax and the levy is without jurisdiction under Article 285(1) read with Article 265 of the Constitution of India.

5. These two questions relate to the substantive levy of tax on the transactions in question.

6. The proceedings for the transfer application reveal that only such matters before this Court were required to be kept pending in which same question were raised which were pending consideration by the Supreme Court by observing that further hearing of the matter about the taxability of transaction of supplies by

the Government department be stayed.

7. That order makes it succinctly clear that issues on which transfer application was made were debatable issue required consideration by the High Court, and taking a stand on such issue by the concerned assessee that such transactions are not sale transactions and are not exigible to tax is bona fide and not with a view to conceal the particulars of sale. Such a stand cannot be termed as frivolous.

8. In these circumstances the conclusion reached by the Tribunal the order of the appellate authority that taking a bona fide stand on a debatable issue in the matter of taxability of transaction and acting in accordance with it cannot amount to concealment, and therefore, no penalty is leviable in respect/thereof, was fully justified. I am in agreement with the conclusion reached by the Board.

9. Hence, these revision petitions are dismissed with no order as to costs.