

(2013) 08 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Nos. 21, 153 and 531 of 2005

Assistant Commissioner

APPELLANT

Vs

Somani Mills

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2014) 44 GST 539

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Judgement

Pratap Krishna Lohra, J.—Since common issues and questions of law are involved in all these three revision petitions u/s 86 of the Rajasthan Sales Tax Act, 1994 (for short, the Act of 1994"), therefore, all of them are heard together and being disposed of by this common order. At the threshold, while admitting all these revision petitions, the question of law was not framed but during the course of hearing, the following question of law has emerged for determination:

Whether the learned Tax Board was justified in construing Notifications dated 13th of June 1994 and 20th of March 1997 for arriving at a conclusion that woollen carpet yarn is exempted from tax?

2. In the first revision petition bearing S.B. Sales Tax Revision Petition No. 21 of 2005, the impugned order of the learned Tax Board pertains to the assessment year 1995-96 whereas in two other connected revision petitions, the order of assessment is of assessment year 1996-97. Taking into account the fact that common question of law is involved in all these revision petitions, for the sake of convenience, the factual matrix giving rise to all these cases, as alleged in S.B. Sales Tax Revision No. 21 of 2005, are set out hereinafter.

3. Succinctly stated, the facts of the case are that the respondent-assessee is a manufacturer of carpet woollen yarn and for the assessment year 1995-96 it has submitted four quarterly returns showing total sale of Rs. 2,95,77,801.85. As per the Revenue, the assessee deposited a deficit tax for a sum of Rs. 68,895/-, for

which the assessee has claimed 4% set off of the tax on the anvil that woollen carpet yarn is a raw wool, which is exempted from tax by virtue of (Notification dated 13th of June 1994 issued by the Government u/s 4(2) of the Rajasthan Sales Tax Act, 1954 as well as Notification dated 20th of March, 1997 issued by the Government u/s 15 of the Act of 1994. The Assessing Authority, after examining the Notifications, refused to concur with the contention of the assessee and fastened tax liability on the assessee and also imposed interest on the deficit amount of tax.

4. Appalled by the assessment order, respondent-assessee preferred an appeal before the Deputy Commissioner (Appeals) Commercial Taxes Department, Bikaner u/s 84 of the Act of 1994 but the said effort of the assessee also proved to be abortive.

5. Thus, feeling aggrieved from the verdict of the appellate authority, the assessee approached the learned Tax Board, by preferring appeal u/s 85 of the Act of 1994. The learned Tax Board, after harmoniously construing the Notifications dated 13th of June, 1994 and 20th of March, 1997, concurred with the grievances of the respondent-assessee and allowed him set off of 4% of the tax by the impugned order.

6. Learned counsel for the Revenue, Mr. Dinesh Kumar Godara, appearing for Mr. V.K. Mathur, has strenuously urged that the language employed in Notification dated 13th of June, 1994 is clear and unambiguous wherein the exemption from tax is envisaged for manufacture of woollen yarn only within the State of Rajasthan and that exemption cannot be extended vis-?-vis woollen carpet yarn. With these submissions, the learned counsel would urge that the learned Tax Board has committed grave and serious error in interpreting the Notification dated 13th of June, 1994 and as such the impugned order is liable to be interfered with.

7. Mr. Dinesh Kumar Godara, learned counsel for the petitioner, has laid great emphasis that woollen yarn and woollen carpet yarn are different products and therefore the learned Tax Board by construing the woollen yarn and woollen carpet yarn as one product, has misread the Notification dated 13th of June, 1994 and solely on that ground the impugned order of learned Tax Board is vitiated.

8. The learned counsel for the petitioner Revenue, while assailing the impugned order, has contended that the learned Tax Board has erroneously applied the Notification dated 20th of March, 1997 because the impugned tax assessment of the assessee is anterior to the said Notification. The sum and substance of the submission of the learned counsel for the petitioner is that the Notification dated 20th of March, 1997 is not applicable for allowing set off of 4% tax to the assessee.

9. Per contra, Mr. Varun Singhvi for Mr. Dinesh Mehta, learned counsel for the respondent-assessee, has vehemently argued that woollen yarn and woollen

carpet yarn are raw wool and as such 4% exemption of set off on the tax allowed by the learned Tax Board is a just decision, which is in consonance and in conformity with the Notification dated 13th of June, 1994. Mr. Singhvi has argued with full eloquence that wool carpet yarn is a sub-category of the wool yarn, and therefore, the product manufactured by the assessee is covered within the four corners of Notification dated 13th of June, 1994. Mr. Singhvi submits that there is nothing on record to show that these are two different products and as such the conclusions drawn by the learned Tax Board that both these products fall within the ambit of raw wool cannot be faulted. Supporting the verdict of the learned Tax Board, Mr. Singhvi would urge that the learned Tax Board has rightly construed the Notification dated 20th of March, 1997 to the advantage of assessee and the argument of the learned counsel for the Revenue in this behalf are merely ceremonious without any substance. Taking a dig at the argument of the learned counsel for the petitioner Revenue, that Notification dated 20th of March, 1997 is not applicable vis-?-vis the assessee, Mr. Singhvi submits that this argument is wholly unfounded and the said ambitious plea of the learned counsel for the Revenue cannot be sustained in the light of recitals contained in the Notification itself. Learned counsel for the assessee while inviting attention of this Court towards Notification dated 20th of March, 1997 has contended that the said Notification has been given retrospective effect, inasmuch as it has been made applicable w.e.f. 15th June, 1994, and therefore, the learned Tax Board has rightly pressed into service the same while passing the impugned order. Emphasizing the retrospective operation of the Notification dated 20th of March, 1997, Mr. Singhvi would urge that the intention of the Government to grant exemption from tax for woollen carpet yarn was very much there in the Notification dated 13th of June, 1994 and that is why while giving retrospective effect to the Notification dated 20th of March, 1997, this clarification is incorporated in the form of giving effect to the Notification from an anterior date i.e. 15th of June, 1994. Thus, the sum and substance of the submission of Mr. Singhvi is that Notification dated 20th of March, 1997 is nothing but a clarification of earlier Notification dated 13th of June, 1994.

10. I have heard the learned counsel for the rival parties, perused the impugned order and scanned the materials on record.

11. The first and foremost question is the power of the State Government for exemption of tax. The said power is clearly envisaged u/s 15 of the Act of 1994. The complete text of Section 15 is reproduced as infra:

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 Notification 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 be specified in the Notification.

From a bare perusal of Section 15, it is crystal clear that State Government can

issue Notification for exemption of tax for sale or purchase of any goods or class of goods, or any person or class of persons for expediency or in the public interest. At the threshold, the State Government issued Notification dated 27th of June, 1990 while exercising powers u/s 4(2) of the Rajasthan Sales Tax Act, 1954, which is pari materia to Section 15 of the Act of 1994, granting exemption from tax, sale or purchase of raw wool to the extent to which the rate of tax in respect thereof exists 1.5 per cent on certain terms. The said Notification was further followed by yet another Notification on 13th of June, 1994, whereby exemption from tax on sale or purchase of any raw wool was envisaged on certain conditions. In the Notification dated 13th of June, 1994, Clause (1) reads as under:

(1) That such raw wool is used as raw material in the manufacture of woollen yarn within the State of Rajasthan

The Notification dated 13th of June, 1994 was further followed by Notification dated 20th of March, 1997, which was issued u/s 15 of the Act of 1994. The complete text of Notification is reproduced as infra:

S. No. 1100:F.4(1)FD/TaxDivn/97-133, dt 20-3-1997

S.O. 345.--In exercise of the powers conferred by S. 15, RST Act, 1994, the State Govt. hereby exempts from tax the sale or purchase of raw wool for the period from 15-6-1994 to 11-3-1997 on the following conditions, namely:--

1. That such raw wool is used as raw material in the manufacture of woollen carpet yarn within the State of Rajasthan;
2. That such manufactured woollen carpet yarn is sold within the State or in the course of inter-State trade or commerce;
3. That such manufacturer shall issue a declaration to this effect in Form ST 17 appended to the Rajasthan Sales Tax Rules, 1995, to the selling dealer;
4. That the tax charged or collected on the sale of said raw wool, shall be paid to the State Govt.; and
5. That the tax already paid on the sale or purchase in respect of such raw wool, to the State Govt., if any, shall not be refunded.

A cumulative reading of these three Notifications clearly and unequivocally reveals that the intention of the Government for issuance of these Notifications was to serve the interest of public at large and while issuing these Notifications, the State Government has formed a definite opinion that issuance of such Notifications is necessary or expedient in the public interest.

12. Now adverting to the contentious issue involved in the matter as to whether woollen yarn and woollen carpet yarn are different products or both are forming part and parcel of raw wool, suffice it to say that basically there are two type of yarns, which with its own method of fibre preparation and spinning techniques,

namely, woollen and worsted yarn. Woollen yarns, usually made from shorter fibres, are thick and full and are used for such items as tweed fabrics and blankets. Worsted yarn is firm-textured, compactly twisted woollen yarn made from long-staple fibres. Worsted is the name of a yarn, the cloth made from this yarn, and a yarn weight category. This type of wool is made of long-staple fibres that have been combed to remove unwanted short fibres and made them lie parallel. The fibres are then tightly twisted and woven tightly as well which inhibits creasing. It is popular for suits and trousers. The woollen and worsted process both require that the wool (and other similar animal fibres, cashmere, camel, etc.) be cleaned before mechanical processing. Woollen and worsted nomenclatures apply only to the textile processing of animal fibres, but it has become common to include fibre blends under these terms. The resultant fabrics will be classified as being either woollen or worsted, but this designation is assigned during fibre processing and yarn formation, not in the cloth or finished garment.

13. Under the Act of 1994, the word "yarn" has not been defined and both the words; namely, "woollen yarn" and "woollen carpet yarn" are also not defined and explained in the Notifications dated 13th of March, 1994 and 20th of July, 1997. "Yarn" means any fibre, or wool, silk, flax, cotton nylon etc. spun into strands for weaving, knitting or making thread. The fibre, in order to answer the description of yarn, must have two characteristics, firstly, it should be a spun stand and secondly, such strand should be primarily meant for use in weaving, knitting, or rope making.

14. The term "raw material" is defined under sub-section (34) of Section 2 of the Act of 1994, which reads as under:

(34) "raw material" means goods used as an ingredient in the manufacture of other goods and includes preservative, fuel and lubricant required for the process of manufacture.

Learned counsel appearing for the petitioner Revenue has not been able to explain the term "woollen carpet yarn", and on the other hand the learned counsel for the respondent-assessee has made an attempt to explain the said term by submitting that it is a sub-category of woollen yarn. In the Notification dated 13th of June, 1994, the State Government has exempted from tax the sale or purchase of raw wool, which includes raw material used in manufacture of woollen yarn. Whereas in the Notification dated 20th of March, 1997 besides using the term "raw material" in manufacture of woollen carpet yarn, it has also included the term "woollen carpet yarn". In common parlance, "woollen carpet yarn" is obviously inferior to "woollen yarn" because woollen yarn is used for such items as tweed fabrics and blankets whereas woollen carpet yarn is used for manufacture of carpets. In these circumstances, any prudent man can draw this inference that Notification dated 13th of June, 1994 as well as Notification dated 20th of March, 1997, granting exemption from tax for sale or purchase of raw wool, i.e. woollen carpet yarn, is discernible with clarity and precision.

15. On examining the matter in its entirety and churning out the so-called contentious issue canvassed by the learned counsel for the petitioner Revenue, I am unable to concur with the submission of the learned counsel for the petitioner that exemption from tax for sale or purchase of woollen carpet yarn is not envisaged in the Notification dated 13th of June, 1994 issued by the State Government. Moreover, the subsequent Notification dated 20th of March, 1997, which has been given retrospective effect and the same has been made effective from 15th of June, 1994 clarifies that "woollen yarn" and "woollen carpet yarn" fall within the ambit of exempted category for levy of tax on its sale and purchase, by showing the true intention of the earlier Notification of 13th of June, 1994.

16. With these findings, the irresistible conclusion of this Court is that the question of law framed deserves answer in favour of the respondent-assessee and against the Revenue and no interference with the impugned verdicts of the learned Tax Board in all these three matters is called for.

17. The upshot of the above discussion is that there is no merit in all these revision petitions and accordingly all these three revision petitions are dismissed. No order as to costs.