(2013) 12 RAJ CK 0044

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 537 of 2005

Assistant Commissioner, Circle 'C' Udaipur — APPELLANT

Vs

Telco Construction and Equipment Co. Ltd. — RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 43 GST 198

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : V.K. Mathur and D.K. Godara, for the Appellant; Varun Singhvi and Dinesh Mehta, for the Respondent

Judgement

Arun Bhansali, J.—This revision petition is directed against the judgment dated 8.1.2003 passed by the Rajasthan Tax Board, Ajmer (''Tax Board''), whereby the appeal filed by the respondent-Assessee was accepted and the additional tax, penalty and interest was set-aside by the Tax Board. The facts in brief may be noticed thus: the business premises of the assessee was surveyed by the Assistant Commissioner, Circle ''C, Udaipur (''AC'') on 3.10.2000, 7.10.2000, 16.10.2000 and 17.10.2000 and during the survey it was found that the assessee has during the period from 1.4.2000 to 31.9.2000 effected inter-State sales of Hydraulic Excavators on which 4% tax was payable, but the assessee for the purpose of evading tax has shown the same having been sold within the State and consequently, the Assessing Authority vide Assessment Order dated 12.2.2001 assessed the tax and imposed penalty and also levied interest.

2. Aggrieved against the Assessment Order, the respondent filed an appeal before the Deputy Commissioner (Appeals), who vide order dated 4.10.2001 dismissed the appeal upholding the findings recorded by the Assessing Officer.

3. The orders passed by the Assessing Officer and the Deputy Commissioner (Appeals) were questioned by the respondent before the Tax Board, who by the impugned judgment dated 8.1.2003 allowed the appeal filed by the respondent

and set aside the imposition of additional tax, penalty and interest.

4. It is submitted by learned counsel for the petitioner that the judgment passed by the Tax Board is erroneous, contrary to the provisions of the statute and in violation of legal position. It was submitted that the applicable notification in the present case was notification dated 27.8.1992, ignoring which the Tax Board has relied on the notification dated 30.3.2000, which has resulted in grave error. Consequently, it was submitted that the order impugned passed by the Tax Board deserves to be quashed and set aside.

5. Per contra, it was submitted by learned counsel appearing for the respondent that even if the contention of inter-State sale raised by the department is accepted, the respondent was not liable to pay tax beyond 2%, which was, in fact, paid by him and therefore, there is no question of imposition of any additional tax, penalty and interest and the order impugned passed by the Tax Board does not call for any interference.

6. I have considered the rival submissions.

7. The three authorities i.e. Assessing Officer, Deputy Commissioner (Appeals) and the Tax Board have recorded a concurrent finding that the respondent had made inter-State sales of the Hydraulic Excavators, the said finding being concurrent is not open to interference and therefore, it has to be assumed that the assessee undertook inter-State sales.

8. The issue then arises as to whether the assessee was entitled to take benefit of the notification dated 30.3.2000 or was liable to pay tax under notification dated 27.8.1992.

9. It would be relevant to quote relevant extract from both the notifications, which reads as under:-

S. No. 882: F. 4(46)FDGr.IV/92-31 dated 27.8.1992 S.O. 119.-In exercise of the powers conferred by S. 8(5), CST Act, 1956, the State Govt. [.1.], hereby directs that the tax payable under sub-section (1) and sub-section (2) of the said section by any dealer having his place of business in the State in respect of sale made by him from any such place of business in the course of inter-State trade or commerce of Hydraulic Excavators (Earthmoving and Mining Machinery), Mobile Cranes and Hydraulic Dumpers, shall be calculated at the rate of 4% without furnishing "C" Form.

S. No. 1313: F. 4(1)FD/Tax Div/2000-280 dated 30.3.2000 S.O. 356.-In exercise of the powers conferred by S. 15, RST Act, 1994, the State Govt. [.1.], hereby exempts from tax the sale of the goods specified in column 2 of the List annexed hereto, to the extent to which the rate of tax exceeds the extent of rate as specified in column 3 up to the period as mentioned in column 4, namely:-

2. *** 3. ***

10. A bare look at the notification dated 27.8.1992 would reveal that the

notification provided for rate of tax of 4% in case Hydraulic Excavators were sold in the course of inter-State trade or commerce without furnishing ''C-Form''.

11. On the other hand, the notification dated 30.3.2000 issued u/s 15 of the Rajasthan Sales Tax Act, 1994 (''the Act of 1994''), which is general in nature, provides for exemption from tax the sale of goods specified in column 2 of the list to the extent to which the rate of tax exceeds the extent of rate as specified in column 3 and column 3 in the present case provides for extent of rate at 2%.

12. While notification dated 27.8.1992 was specific and provided for levy of 4% tax on account of failure by the assessee in furnishing ''C-Form'', the notification dated 30.3.2000 did not provide for any condition regarding furnishing of ''C-Form'' in case of inter-State sale for the purpose of availing benefit under the said notification.

13. Section 15 of the Act of 1994 provides for power to the State Government to exempt fully or partially from the tax, the sale or purchase of any goods without any condition or with such condition as may be specified in the notification. As noticed above the notification dated 30.3.2000 did not provide for any condition whatsoever. Once the rate of tax under notification dated 30.3.2000 for Hydraulic Excavators was provided at 2%, there was no occasion for the assessee to obtain ''C-Form'' so as to pay tax u/s 8(1) of the Central Sales Tax Act, 1956, which was 4%.

14. Therefore, the fact that inter-State transaction took place and the assessee had not furnished ''C-Form'' regarding the said transaction is of no consequence. The notification dated 27.8.1992 had no application to the case and once by notification dated 30.3.2000 the rate of tax was prescribed as 2% on account of exemption u/s 15 of the Act of 1994, it cannot be said that the respondent was liable for payment of additional tax, penalty and interest. Consequently, for the above reasons, there is no substance in the revision petition and the same is, therefore, dismissed.

No costs.

