
(2000) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Sales Tax Revision Petition. No. 359 of 1999

Assistant Commissioner Commercial Tax Deptt.

APPELLANT

Vs

Hindustan Zinc Ltd.

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : (2000) 2 WLN 372

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The petitioner challenges the order passed by the Rajasthan Tax Board, Ajmer, dated 20th July, 1998 by which the order passed by the Dy. Commissioner (Appeals) setting aside the Assessment Order passed by the Assessing Officer was affirmed.

3. The respondent is a manufacturer of zinc ingots and zinc lead etc. The period for which the assessment was made is financial year 1985-86, ending on 31st March, 1986, During this period, the assessee had sold goods to National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, against which the National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, has given "D" forms to the respondent. For the previous financial year 1984-85, the case of the assessee that M/s. National Hydro Electric Power Corporation Limited was agent of Salal Transmission Construction Division, Jammu, which is a department of J & K. Govt. and therefore, was entitled to purchase goods against "D" forms, had been accepted. Because of the finding given by the Dy. Commissioner (Appeals) for the earlier year in the regular assessment for the period in question, the same contention has also been accepted. However, on finding that "D" form submitted M/s. National Hydro Electric Power Corporation Limited bears the seal of the Corporation, which is an autonomous body and has

its own juristic personality, and the "D" forms could not be considered from Salal Transmission Construction Division, Jammu, he was of the opinion that assessee was not entitled to claim benefit of lower rate of tax on the basis of "D" forms submitted by such autonomous body. Accordingly, it initiated reassessment proceedings. The Assessing Officer while accepting that so far as Salal Transmission Construction Division Jammu is concerned is a department of the Govt. of Jammu & Kashmir who could purchase goods against issue of certificate in "D" form, held that "D" form which has been produced is under the seal of National Hydro Electric Power Corporation, which is an autonomous body, who by itself is not entitled to purchase the goods against "D" forms. Respondent was given an opportunity to produce "C" form obtained from the buyer, if it was a registered dealer, but the same were not produced. It was also found on the basis of the photo-stat copies of the bills which have been produced on record that in fact the sales have been effected to National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, which according to the Assessing Officer is a transaction between the respondent and the NHEP Corporation and not between the respondent and the Govt. of Jammu & Kashmir. With these findings he found that the assessee is liable to pay tax at 10% instead of 4% and levied the difference of tax by way of reassessment. The Dy. Commissioner (Appeals), on appeal, solely relying on its earlier decision given in relation to the Financial Year 1984-85 and the fact that no appeal had been filed against that, set aside the assessment order. That order has been affirmed by the Tax Board on that every ground.

4. Having heard the learned Counsel for the parties, I am of the opinion that the orders of the Tax Board as well as of the Dy. Commissioner (Appeals) are not speaking orders inasmuch as they are not supported by the reasons either on the finding of facts or of law. In reaching their conclusions, solely on the basis of the order passed in the previous assessment, without considering the impact on the nature of transaction of the bill issued by the company in the name of National Hydro Electric Power Corporation, the effect of certificate in Form "D" submitted by National Hydro Electric Power Corporation Limited Transmission Unit, Jammu under its own seal and not under the seal and signature of Salal Trans Corporation, and without considering who the actual buyer of the respondent company is, the appellate authorities have acted mechanically. In coming to its conclusion, even it has not considered that so far as deal is concerned whether it is between dealer and the J. & K. Govt. or its department or with the NHEP Corporation. If the latter is the buyer, then a contract between buyer and J. & K. Govt. cannot affect the liability of tax in the hands of dealer in question on that basis.

5. Learned counsel for the respondent, urged that the bill clearly shows that it is in the name of the National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, account SAE India Limited, clearly goes to show that the Corporation was purchasing only as an agent and the real purchaser is SAE India Limited, attention was invited to Ex-A. I am unable to accept that for the

simple reason that the bill which is in the name of the Assistant Manager, National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, the name of SAE India Limited by itself does not lead to any such inference that the bill is for SAE India Limited and National Hydro Electric Power Corporation Limited is only acting as its agent. If any, it prima facie indicates to the contrary. Ordinarily, if the contract is between SAE and the respondent, the bill would have been otherwise in the name of the SAE India Limited, account to whom the goods have been given as an agent.

6. Be that as it may, these materials have not at all been examined by the appellant authorities before reaching to their conclusions on the findings of fact, on the premise of which they have reached their further conclusion.

7. I am also not impressed with the contention of learned Counsel for the respondent that the National Hydro Electric Power Corporation Limited Transmission Unit, Jammu, being a company of Govt. is entitled to purchase goods against "D" forms, inasmuch as that plea was never raised before any of the authorities below which could be examined by the authorities in the first instance. Ordinarily, in the proceedings under taxing statutes the findings reached in earlier orders which depends on appreciation of facts does not operate as res judicata though may be a relevant factor and ordinarily not deviated unless there be weighty reasons leading to contrary conclusions. Nor, allowing earlier conclusions of fact to go unchallenged, act as an estoppel.

8. In the absence of basic findings of facts, it would be futile to examine the legal issue whether a sale to a person as an agent would amount to a sale to the third party; when there is no direct sale, between the seller and the principal of the purchase can it be treated as a sale between agent and principal or principal to principal and on that basis form "D" was rightly issued. For this necessary facts in the first instance has to be reached by the fact finding authority by properly appreciating the evidence and giving their conclusions in that regard.

9. The revision, therefore, succeeds. The impugned orders of the Rajasthan Tax Board as well as of the Deputy Commissioner (Appeals) are set aside and the matter is remanded to the Dy. Commissioner (Appeals) for deciding appeal do novo after reaching proper findings. There shall be no orders as to costs.