**(2014) 02 RAJ CK 0086**

**In the Rajasthan High Court**

**Case No :** . Sales Tax Revision No. 192 of 2011

Assistant Commissioner, Commercial Taxes, Anti Evasion APPELLANT

Vs

Rajasthan Textile Mills RESPONDENT

**Date of Decision :** 03-02-2014

**Acts Referred:**

**Citation :** (2014) 74 VST 472

**Hon'ble Judges :** Bela M. Trivedi, J

**Bench :** Single Bench

**Advocate :** Tanvi Sahai for R.B. Mathur, Advocate for the Appellant

# Judgement

Bela M. Trivedi, J.—The instant sales tax revision petition has been filed by the petitioner-Department under section 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the said Act") challenging the order dated November 10, 2004 passed by the Rajasthan Tax Board, Ajmer (hereinafter referred to as "the Board") in Appeal No. 502 of 2004, whereby the Board has dismissed the appeal filed by the petitioner-appellant, along-with the other appeals. The short facts are that the respondent-assessee was engaged in manufacturing and selling of cotton yarn, acrylic yarn, synthetic yarn and staple yarn. On the inspection made at the premises of the assessee on May 24, 2001, it was found that during the assessment year 1996-97, the assessee had purchased high speed diesel and lubricants for using the same as raw material, by making such declaration on the declaration form ST-17, at the concessional tax rate of three per cent under section 10(1) of the said Act. Since the assessee was found to be using the diesel and lubricants as raw material for the generation of the electricity in the captive power plant for running its factory, the assessing authority had found him responsible for the tax evasion, as according to the assessing authority the applicable tax rate for purchase of diesel for power generation was 4 per cent as per section 10(3) of the said Act. The assessing authority, after serving the notice and taking into consideration the reply filed by the assessee, passed the order dated June 14, 2001 raising demand of Rs. 5,05,088 against the respondent-assessee. Being aggrieved by the said order, the respondent-assessee had preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes Department, Kota, which appeal was allowed by the said authority vide the order dated July 16, 2003. Being aggrieved by the same, the petitioner-Department had preferred the appeal before the Board, which was dismissed on November 10, 2004, against which the present revision petition has been filed.

2. The only issue raised by the learned counsel Ms. Tanvi Sahai for the petitioner is that the respondent-assessee was responsible to pay the tax on the purchase of diesel and lubricants used for power generation in the DG set at four per cent as required under section 10(3) of the said Act and not at the concessional rate of three per cent under section 10(1) of the said Act.

3. In the opinion of the court, the decision of the apex court in case of Commercial Taxation Officer Vs. Rajasthan Taxchem Ltd., clinches the issue, wherein it has been observed as under (page 536 in 5 VST):

"The definition of ''raw material'' under section 2(34) which specifically includes fuel required for the purpose of manufacture as raw material. The word ''includes'' gives a wider meaning to the words or phrases in the statute. The word ''includes'' is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word ''include'' is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include. There is no dispute in the instant case that the diesel and lubricant is used to generate electricity through DG sets which is admittedly used for the purpose of manufacturing yarn. Thus, it is seen that as diesel is specifically and intentionally included in the definition of raw material by the Legislature, the question that whether it is directly or indirectly used in the process of manufacture is irrelevant..."

4. The aforesaid decision has also been relied upon by this court in case of Assistant Commissioner, Anti Evasion, Commercial Taxes Department-III v. Rajasthan Textile Mills [2014] 2 VST-OL 432 (Raj) in S.B. Sales Tax Revision Petition No. 187 of 2011 decided on August 27, 2013. The learned counsel for the petitioner has not been able to show any legal position contrary to the one settled by the apex court in the afore-stated decision. Under the circumstances the court does not find any illegality in the impugned order passed by the Board. The petition being devoid of merits is dismissed.