**(2008) 05 RAJ CK 0165**

**In the Rajasthan High Court**

Assistant Commissioner, Commercial Taxes APPELLANT

Vs

Rajasthan Industries RESPONDENT

**Date of Decision :** 21-05-2008

**Acts Referred:**

Rajasthan Sales Tax Act, 1994 — Section 65

**Citation :** (2009) 24 VST 418

**Hon'ble Judges :** Dinesh Maheshwari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Dinesh Maheshwari, J.—The Tax Board in its impugned order dated June 26, 2007 has dismissed as infructuous the appeal filed by the petitioner against the order dated March 1, 2005 as passed by the Deputy Commissioner (Appeals), Bhilwara whereby the appeal filed by the dealer against the provisional assessment order dated July 30, 2004 was partly allowed. The learned Tax Board has dismissed the appeal as infructuous only on the ground that final assessment order in relation to the dealer has been made on November 16, 2006 incorporating the provisional assessment order dated July 30, 2004.

2. By way of this revision petition, the petitioner seeks to challenge the order aforesaid as passed by the Tax Board dismissing the appeal filed by the petitioner as infructuous. Though learned Counsel for the petitioner has candidly pointed out that this Court has already taken the view that the appeal against a matter arising out of provisional assessment is rendered infructuous after passing of final assessment order and has pointed out the decision of this Court in the case of Assistant Commissioner, Commercial Taxes Vs. Mahaveer Timber Mart, , but then, learned Counsel submitted that in the final assessment order, the matter relating to imposition of penalty u/s 65 of the Rajasthan Sales Tax Act, 1994 was kept reserved due to pendency of the aforesaid appeal in relation to the provisional assessment order and the learned Tax Board has failed to consider the observations as made in the final assessment order dated November 16,

2006 and has committed error in dismissing the appeal as infructuous, which would practically leave the Department remediless against the order dated March 1, 2005 as passed by the Deputy Commissioner (Appeals).

3. The submission as sought to be made by the learned Counsel stands effectively negatived by the decision in Assistant Commissioner, Commercial Taxes Vs. Mahaveer Timber Mart, wherein this Court has said, - (pages 416 to 418 of VST, paras 21-23)

20. It will be worthwhile to notice the reason given by this Court on this issue in Shreechand''s case [1996] 100 STC 53 (Raj). In the said case, a specific question was raised that when the provisional assessments were under challenge in appeal and the appellate authority modifies or sets aside the provisional assessment, whether the assessing authority, while making the final assessment u/s 10 (in the present case Section 29), is bound by the orders made in the appeal from the orders of the provisional assessment? This Court held that the answer is simple. As the assessment is provisional and subject to final assessment u/s 10 of the Act of 1954 (section 29 of the Act of 1994), even the orders passed by the appellate authority while dealing with the appeals from the provisional assessment orders would be subject to final assessment u/s 10 of the Act of 1954 (section 29 of the Act of 1994). This Court very specifically held that, ''There is no question of assessing authority defying or flouting the orders of the superior officers while making assessment u/s 10 of the Act. The situation is akin to a suit for permanent injunction in which a temporary injunction is passed. Even if the temporary injunction is confirmed in appeal by a higher court, the trial court is not precluded from dismissing the suit and refusing to grant permanent injunction''.

21. In view of the above reasons, if any mistake has been committed by the assessing authority by not following the decision of this Court delivered in case of Shreechand [1996] 100 STC 53 and Division Bench judgment of this Court in the case of Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 124 STC 298 : 25 Tax World 81, the order of the Tax Board dated February 8, 2002 dismissing the appeal of the Revenue as infructuous on passing of the final assessment cannot be set aside despite the fact that the assessing authority in final assessment order observed that appropriate action will be taken in accordance with the decision given by the Tax Board in appeal challenging the order of the Deputy Commissioner (Appeals) dated March 17, 1998. Since it has been held that as per law, the provisional assessment is subject to regular assessment and the order even if it is passed and upheld by the highest court in provisional assessment proceedings, then by the order of the assessing authority which may have been passed in the proceedings of regular assessment, cannot make the provisional assessment order to become an order of regular assessment and give precedence to the provisional assessment order over regular assessment simply because the regular assessment order itself made the regular assessment order subject to decision on provisional assessment.

 

22. The contention of learned Counsel for the Revenue is that if the order of Tax Board is not set aside, then the Revenue will be remediless despite the fact that there is an order that the appropriate order will be passed in regular assessment proceedings in accordance with the order which may be passed in provisional assessment. In view of the reasons mentioned above, this argument of learned Counsel for the Revenue deserves to be rejected on the ground that the law cannot be interpreted because of the reason of hardship which may be caused to the authority by any order which was contrary to law. In the cases of Shreechand [1996] 100 STC 53 (Raj) and Commercial Taxes Officer Vs. P.G. Fiiles Limited, as well as Division Bench judgment in the case of Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 124 STC 298 (Raj) : 25 Tax World 81, almost similar situations were there except mentioning in the order of regular assessment that regular assessment will be subject to decision in the provisional assessment.

4. For the view already taken by this Court, the order of Tax Board remains unexceptionable and calls for no interference. Even when the assessing authority in the final assessment order has left the matter regarding penalty aside due to pendency of appeal before the Tax Board, paragraphs 21 and 22 (22 and 23 of VST) of the decision in Assistant Commissioner, Commercial Taxes Vs. Mahaveer Timber Mart, as reproduced hereinabove operate squarely against the contention on competence of appeal in relation to the provisional assessment order after passing of final assessment order.

5. The revision petition fails and is, therefore, rejected.

 