(2011) 08 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 366 of 2005

Assistant Commissioner, Special Circle, Commercial Taxes — APPELLANT

Vs

Badar Mal Madan Lal — RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 16(1)(j)

Citation : (2013) 61 VST 442

Hon'ble Judges : Kailash Chandra Joshi, J

Bench : Single Bench

Advocate : Lokesh Mathur on Behalf of Vinit Kumar Mathur, for the Appellant; Anjay Kothari, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Chandra Joshi, J.—This revision petition filed by Revenue is directed against the judgment dated June 11, 2002 passed by the Rajasthan Tax Board, Ajmer in Appeal No. 1169 of 1998/Bhilwara, whereby the learned Tax Board dismissed the appeal of the Revenue filed against the order dated May 19, 1998 passed by the Deputy Commissioner (Appeals), Ajmer, by which the appeal of the non-petitioner assessee was allowed and the order dated July 11, 1994 of the assessing authority was set aside. The facts of the case in brief are that the tax assessment of the non-petitioner assessee for the year 1992-93 (from April 1, 1992 to March 1, 1993) was done on July 11, 1994, wherein the assessee made a sale of cotton in the sum of Rs. 24,14,661 to M/s. Mewar Textile Mills, Bhilwara, on which tax was collected at the rate of four per cent. Thereafter M/s. Mewar Textile Mills presented form ST-17 for the said goods, therefore, the assessee collected the tax at the rate of three per cent and refunded one per cent tax amount to M/s. Mewar Textile Mills. In this regard the letter of M/s. Mewar Textile Mills, Bhilwara dated March 5, 1994 is on record, wherein they have prayed for imposing the tax at the rate of three per cent instead of four per cent as shown by the assessee in the bills. The assessing authority passed an order dated July 11, 1994 for forfeiture of the amount of tax to the extent of one per cent shown to be deposited by the non-petitioner assessee consequent upon the sale of cotton made to M/s. Mewar Textile Mills, Bhilwara. This order was passed u/s 16(1)(j) of the Rajasthan Sales Tax Act. Against the said order dated July 11, 1994, the non-petitioner assessee filed an appeal before the Deputy Commissioner (Appeals), Ajmer, which was allowed vide order dated May 19, 1998 and the order passed by the assessing authority was set aside. Being aggrieved by the order passed by the first appellate authority, the petitioner-Revenue preferred a second appeal before the Rajasthan Tax Board, Ajmer. The learned Tax Board, Ajmer, after hearing both the parties dismissed the appeal of the Revenue vide order dated June 11, 2002. The said order of the learned Tax Board has been challenged in this revision petition.

2. The learned counsel for the petitioner contended that the order of the Deputy Commissioner (Appeals), Ajmer, to refund the excess tax deposited by the assessee cannot be said to be legal and the same is required to be set aside. He further contended that the Rajasthan Tax Board, Ajmer vide order dated June 11, 2002 erred in dismissing the appeal of the Revenue.

3. Per contra, the learned counsel for the non-petitioner assessee vehemently defended the judgment of the Deputy Commissioner (Appeals), Ajmer and the impugned order of the Rajasthan Tax Board, Ajmer. The learned counsel in support of his contentions relied upon the judgment of the honourable apex court in Maharashtra Distilleries Ltd. Vs. Municipal Corporation of Aurangabad and Another, , wherein in the case of excess octroi recovered by the Municipal Corporation, it has been held that the Municipal Corporation is liable to refund the excess octroi collected.

4. I have considered the rival contentions raised by the learned counsel for both the parties, gone through the facts of the case on record and perused the judgment cited by the learned counsel for the non-petitioner. It is an admitted fact that u/s 16(1)(j) of the Rajasthan Sales Tax Act, 1954, there is no provision for forfeiting the amount of excess tax deposited by a registered dealer. It only provides for levying penalty upon those registered dealers who realize the excess tax. The assessing authority in this case did not think it proper to levy any penalty, on the contrary, he forfeited the amount of excess tax refunded by the non-petitioner assessee u/s 16(1)(j) of the Rajasthan Sales Tax Act, which cannot be said to be an order passed in accordance with the spirit of the provisions of the Act. The provisions contained in section 16(1)(j) of the Rajasthan Sales Tax Act are required to be read along with the provisions contained in section 23B of the Rajasthan Sales Tax Act and these provisions do not provide any force to the arguments advanced by the learned counsel for the petitioner.

5. In view of the aforesaid discussion and in the light of the judgment cited by the learned counsel for the non-petitioner, it cannot be said that the first appellate authority, i.e., the Deputy Commissioner (Appeals), Ajmer or the

second appellate authority, i.e., the Rajasthan Tax Board, Ajmer, have acted in exercise of their jurisdiction illegally or with material irregularity. Resultantly, this revision petition is dismissed. No order as to costs.

