(2014) 08 RAJ CK 0032

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 492/2011

Asstt. Commissioner Circle-B — APPELLANT

Vs

Beriwal Casting Industries Ltd. — RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 84

Citation : (2014) 76 VST 262

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Rajendra Singh, OIC, Advocate for the Appellant

Judgement

Alok Sharma, J.—This revision petition has been filed u/s 84 of the Rajasthan Value Added Tax Act, 2003 read with Section 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter ''the 1994 Act'') against the order dated 25-1-2010 passed by the Rajasthan Tax Board, Ajmer (hereinafter ''the Board'').

Facts:

2. For the financial year 2000-01, the assessee was assessed for turnover tax on 25-5-2002 and paid tax due. Thereafter the assessee received a show cause notice dated 24-11-2004 requiring it to appear on 29-11-2004 and show cause as to why an amount of Rs. 2,94,756/- should not be added to its turnover for the Assessment Year 2000-01 assessed on 25-5-2002 and additional tax thereon with statutory interest and penalty not be levied for the reason that the excise department had apparently found it liable for evasion of excise duty on an amount of Rs. 2,94,756/- for the financial year 2000-01. According to the show cause notice as the escaped amount vis-a-vis excise duty apparently constituted a part of the sale price of the goods manufactured by the assessee, it was liable to be added in the turnover of the assessee earlier determined and escaped turnover tax under the Rajasthan Sales Tax Act, 1954 (hereinafter ''the 1954 Act'') recovered. The assessee apparently did not appear on 29-11-2004 as

required in the show cause notice. Whereupon the department passed an order dated 29-3-2006 fastening additional liability on the assessee on account of escaped turnover tax, interest and penalty aggregating to Rs. 49,636/-.

3. Aggrieved the assessee filed an appeal against the order dated 29-3-2006. The appellate Authority found that the additional tax liability towards turnover tax for the year 2000-01 under the assessing officer''s order dated 29-3-2006 was clearly based only on the purported information from the office of the Auditor and Comptroller General as to evasion of excise duty by the assessee on an amount of Rs. 2,94,756/- during the relevant year. No independent enquiry was conducted for the purpose and material as to underreporting of turnover and consequent short payment of turnover tax obtained. Further in any event the assessee was not provided reasonable opportunity of defence inasmuch as even the purported information received from the office of the Accountant General was not supplied to the assessee. Relying on the judgments of the Tax Board in the case of CTO Kota Vs. M/s. Anand Minerals Pvt. Ltd. [Tax Update (2002) Vol. 4 Part 7 page 312] the Appellate Authority set aside the order dated 29-3-2006 passed by the Assessing Officer u/s 84 of the 1994 Act for levy of purported escaped turnover tax, interest thereon and penalty.

4. The department''s second appeal to the Tax Board failed. Hence this revision petition.

5. Heard the officer in-charge and perused the impugned order dated 25-1-2010 passed by the Tax Board. Considered.

6. In the case of Girdhari Lal Nannelal Vs. The Sales Tax Commissioner, M.P., the Hon''ble Supreme Court has held that sales tax can only be levied on a sale transaction proved by the department for the burden in this regard lies on it. In the case at hand the department has not discharged the burden of proof to establish from any enquiry or otherwise that the assessee had under assessed its turnover. It has mechanically extrapolated the conclusions of the excise department in its own proceeding for alleged escapement of the assessee''s turnover having a bearing of its liability to turnover tax. Even the factual foundation on which the excise department came to a finding of evasion of excise duty on an amount of Rs. 2,94,756/- has not been adverted to or analysed for its impact on the alleged under reporting of the turnover by the assessee having a bearing on liability towards turnover tax. Even the letter of the Auditor and Comptroller General on which re-assessment proceedings for turnover tax were initiated were not supplied to the assessee. Further the essential difference between valuation for purposes of levy of excise duty on the one hand and sales tax on the other was not kept in mind. Reference in this regard, emphasising the difference in the manner of valuation for levy of excise duty on the one hand and for levy of sales/turnover tax on the other, can be made to the judgment of the Hon''ble Supreme Court in Moriroku UT India (P) Ltd. Vs. State of U.P. and Others, wherein it was held that in the case of excise law, the taxable event is manufacture, which is not related to a commercial transaction. On the other

hand, commercial transaction is the basis of the price structure in the sales tax laws. The levy of excise duty is on manufacture while levy of sales tax by its very nature arises at the stage beyond manufacture, i.e. the sale of the article. Para 23 of the opinion of the Hon''ble Supreme Court is reproduced herein below:-

"On the other hand, excise duty is a levy on a taxable event of "manufacture" and it is calculated on the "value" of manufactured goods. Excise duty is not concerned with ownership or sale. The liability under the excise law is event based and irrespective of whether the goods are sold or captively consumed. Under the excise law, the liability is there even when the manufacturer is not the owner of raw material or finished goods (as in the case of job-workers). Excise duty, therefore, is independent of ownership [see Ujagar Prints Vs. Union of India (UOI) and Others etc. etc., . Therefore, for sales tax purposes, what has to be taken into account is the consideration for transfer of property in goods from the seller to the buyer. For this purpose, tax is to be levied on the agreed consideration for transfer of property in the goods and in such a case cost of manufacture is irrelevant. As compared to the sales tax law, the scheme of levy of excise duty is totally different."

7. It is thus apparent that no extrapolation for determination of liability under the 1954 Act can not be made on the basis of determination of liability under the Central Excise Act, 1944 or for that matter any other statute. The 1954 Act is a self contained code for determination of tax liability thereunder. When warranted, its processes are necessarily to be independently resorted to, inquiry held and principles of natural justice complied with before fastening of any liability originally assessed, or relating to escapement of tax. This was not done by the Assessing Officer in his order dated 29-3-2006. In the facts as obtaining, the Tax Board has not committed any illegality in upholding the order dated 15-6-2007 passed by the appellate authority and in dismissing the appeal filed by the department. I do not find any illegality or perversity in the impugned order dated 25-1-2010 passed by the tax Board.

8. There is thus no force in the challenge to the order dated 25-1-2010 passed by the Tax Board.

9. The revision petition is dismissed.

