

(1999) 03 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 785 of 1999

Bhagya Laxmi Oil Mills

APPELLANT

Vs

The State of Raj. and Another

RESPONDENT

Date of Decision : 17-03-1999

Acts Referred:

Citation : (1999) 2 RLW 819 : (1999) 3 WLC 300 : (1999) 1 WLN 474

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—By way of this writ petition, the petitioner Bhagya Laxmi Oil Mills. Bhupalganj, Bhilwara has prayed for issuing a writ of prohibition restraining the respondent No. 2, Commercial Taxes Officer, A Circle, Bhilwara from proceedings further with the impugned show cause notice dated 17.11.1998 calling upon the petitioner to show cause as to why Besan amounting to Rs. 49,65,519/- sold as tax paid should be considered and also prayed that the respondents be restrained from passing any final assessment order for the assessment year 1996-97.

2. Learned Counsel Shri Mehta for the petitioner vehemently submitted that as per the notification dated 27.3.1995 read with notifications dated 23.3.1963 and, 8.9.1976 issued under the Rajasthan Sales Tax Act, the sale of Besan manufactured out of tax paid Pulses is exempted from sales tax, therefore, the applicant has not recovered any sales tax on the sale of such tax paid Besan, therefore, the respondent No. 2 was in error in issuing notice against the petitioner.

3. Writ of prohibition can only be issued in rarest of rare cases. In this case the respondent No. 2 has merely issued show cause notice (Annex. 7) calling upon the petitioner to appear before him and show cause. The submission of Mr. Mehta that the respondent No. 2 has already made up his mind has no substance. From

the prima facie material available with him if the respondent No. 2 has issued a-show cause notice then it cannot be said that he was sitting with a pre-determined mind. On a proper cause shown, the respondent No. 2 can even discharge the notice. In fact, in this case, the petitioner had already replied the show cause notice and also made further representation/reply on 2.1.1999 through their advocates. The hearing of notice is kept on 18.3.1999 as stated by the learned Counsel Shri Mehta at the Bar.

4. In view of the above, I am of the considered opinion that his Court should not interfere at this stage with the show cause notice particularly when the petitioner had already submitted to the jurisdiction of the respondent No. 2 and also filed detailed reply. The contention raised before this Court can certainly be raised before the respondent No. 2. Being the competent authority, he will definitely consider the submissions raised by the petitioner in reply to the show cause notice and, thereafter, pass just and proper order in accordance with law. There is no reason for this Court to draw inference that the respondent No. 2 has already made up his mind, therefore, he will not take any other view of the matter. If the respondent No. 2 is not convinced with the reply to the show cause notice and if he passes any adverse order against the petitioner then there is a statutory alternative remedy of appeal is provided and the petitioner can certainly avail that remedy. The submission of Mr. Mehta that once the respondent No. 2 passes the adverse order then the petitioner has to deposit the 20% amount along with the appeal and that will unnecessarily put the petitioner to hardships cannot be considered at this stage. If there is any provision under the Act to deposit certain amount at the time of appeal then unless and until the same is challenged as ultra vires and it has been held that it is ultra vires then only this Court can consider the same and not at this stage. Nothing more is required to be done in the matter except by making certain observations which I have already made hereinabove.

5. In view of the above discussion, this petition is not entertained at this stage and is hereby dismissed.