(1988) 12 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1314 of 1987

Century Ecka APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 05-12-1988

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 12

Citation : (1989) 74 STC 85

Hon'ble Judges : S.M. Jain, J;Milap Chand Jain, J

Bench : Division Bench

Advocate : B.C. Mehta, for the Appellant; P.K. Bhansali, for the Respondent

Final Decision : Allowed

Judgement

1. By this writ petition, petitioner seeks to quash the assessment order dated 2nd February, 1987 (exhibit 3) and the notice u/s 12 of the Rajasthan Sales Tax Act (exhibit 2).

2. The regular assessment of the petitioner was made vide assessment order (exhibit 1) for the period 1981-82. Subsequently a notice u/s 12 of the Rajasthan Sales Tax Act was issued in connection with the petitioner''s assessment relating to waterproof paper and PVC sheets. It was stated in the notice that at the time of assessment u/s 10(3) of the Act, tax was assessed at the rate of 4 per cent. On the ground of at what rate tax should have been charged, the petitioner''s case was reopened and thereafter reassessment order in respect of the above two items was passed on 2nd February, 1987 (exhibit 3) and demand notice (exhibit 4) was issued for a sum of Rs. 11,203.62. The amount of difference regarding waterproof paper as well as PVC sheet was assessed to Rs. 6,089.82 and interest amounting to Rs. 5,113.80 was levied.

3. The petitioner''s case is that the assessing authority has erred in charging sales tax at the rate of 8 per cent on both the items. These items are covered in the packing material as notified. This question is now no more res Integra. It has

been decided by a Division Bench of this Court in Century Ecka v. State of Rajasthan (1987) 21 STL 115. It has been held by this Court that waterproof paper (bitu minised paper) packing material is obtained by bonding together the layers of craft papers with bitumin. Such packing material is leviable at the rate of 4 per cent and not at the general rate of 8 per cent. With regard to PVC bags as well it has been held that it is covered by the entry "plastic packing material". This is taxable at the general rate up to 4th March, 1979 and on and from 5th March, 1979 it is liable to be taxed at the rate of 4 per cent. As already stated in the assessment order 1981-82, both items are liable to tax at the rate of 4 per cent. Thus, the assessing authority, erred in reopening the petitioner''s assessment and creating the impugned levy.

4. In this view of the matter, notice (exhibit 2), reassessment order (exhibit 3) and notice of demand (exhibit 4) are liable to be quashed.

5. This writ petition is allowed and the orders exhibits 2, 3 and 4 are quashed.

