
(2013) 09 RAJ CK 0225

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 181 of 2012

Commercial Taxes Officer

APPELLANT

Vs

Bhati Construction

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 71 VST 332

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Judgement

Pratap Krishna Lohra, J.—The petitioner-Revenue has preferred this revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 assailing the impugned order dated June 14, 2012 (annexure 3) passed by the learned Tax Board, Ajmer. By the aforesaid impugned order, the learned Tax Board has partly allowed the appeal of the Revenue against the appellate order dated January 4, 2008 and upheld the order passed by the assessing authority to the extent of imposition of penalty. The order of the appellate authority, whereby it has set aside the tax liability and the interest fastened on the assessee, is reversed by the learned Tax Board.

2. The brief facts, giving rise to this revision petition, are that the respondent-assessee is engaged in the business of diesel and LDO. In the assessment year 2004-05, the assessee purchased diesel and LDO and on the said purchase, it availed of discount/incentive. The assessee paid tax on the amount shown in the invoices and not on the discounted amount. At the behest of the assessee, no endeavour was made for submission of statement of sale by depositing the entry tax. Thereupon, a show-cause notice was issued to the assessee by the assessing authority and after considering the reply, the assessing authority vide its order dated January 15, 2007 imposed tax, penalty and interest upon the assessee. The said order of the assessing authority was questioned by the respondent-assessee before the learned Deputy Commissioner (Appeals), Jodhpur and the learned Deputy Commissioner (Appeals) allowed the appeal of

the assessee vide order dated 4th of January 2008 and found that the entry tax, interest and penalty imposed on the assessee u/s 12(5) is not in accordance with law, and therefore, the assessment order to the extent of entry tax, interest and penalty is set aside. On an appeal preferred against the Revenue against the order of the Deputy Commissioner (Appeals), the learned Tax Board has partly allowed the same and maintained the order of the Deputy Commissioner (Appeals) to the extent of waiver of penalty against the assessee.

3. The learned counsel for the Revenue has argued that the learned Tax Board has not examined the matter in proper perspective, and therefore, the order impugned to the extent it has maintained the order passed by the Deputy Commissioner (Appeals) is not sustainable.

4. The learned Tax Board, while maintaining the order of the Deputy Commissioner (Appeals) to the extent of waiver of penalty, has placed reliance on a decision of apex court in case of Sree Krishna Electricals Vs. State of Tamil Nadu and Another, . The learned Tax Board, while interpreting section 12(5) of the Entry Tax Act, applying the ratio decidendi of the aforesaid verdict, has recorded a definite finding that the assessee is registered under the Entry Tax Act, and further it has deposited a sum of Rs. 2,42,221 on March 8, 2007 for the imported diesel and LDO against the tax liability, and the receipt of the challan was also produced before the Commercial Taxes Officer, Jaisalmer, by the assessee on March 9, 2007, therefore, it is not desirable to invoke section 12(5) of the Entry Tax Act. With this specific finding, the learned Tax Board has maintained the order of the appellate authority to the extent it has set aside the order of imposition of penalty. In this view of the matter, I am of the considered opinion that the learned Tax Board has not committed any error of law requiring interference by this court in exercise of revisional jurisdiction. The net result of the above discussion is that this revision petition sans merit and the same is accordingly dismissed.