(2013) 05 RAJ CK 0166

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 51 of 2004

Commercial Taxes Officer APPELLANT

Vs

Braham Prakash Modi RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 10(3)

Citation : (2013) 66 VST 184

Hon'ble Judges : Jainendra Kumar Ranka, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant; Devendra Kumar, for the Respondent

Judgement

Jainendra Kumar Ranka, J.—By this instant sales tax revision petition, the petitioner-Department has assailed the order passed by the Tax Board dated September 30, 2003 by which the order of the Deputy Commissioner (Appeals) was affirmed who vide order dated May 31, 2002 allowed the claim of the respondent-assessee. Brief facts of the case as emerging on the face of record are that the assessee-respondent is a contractor and during the course of its business of construction, he purchased high speed diesel from M/s. Bharat Petroleum Corporation by issuing declaration form "ST-17" and paid tax at the rate of four per cent on purchase of diesel on Rs. 26,61,800. However, the assessing officer came to the conclusion that the assessee-respondent cannot be said to be manufacturer, therefore, he was not entitled to the lower rate of tax at the rate of four per cent and avail of the benefit of declaration "form 17". According to the assessing officer, the respondent was liable to rate of sales tax otherwise applicable on purchase of high speed diesel and therefore the assessing officer levied the differential tax on eight per cent on the aforesaid purchase of diesel.

2. Dissatisfied with the imposition of the said levy of tax, the respondent-assessee carried the matter in appeal before the Deputy Commissioner (Appeals) who vide order dated May 31, 2002, allowed the appeal of the assessee and held

that the assessee was correct and justified in issuing the declaration "form 17", in purchasing the high speed diesel at the rate of four per cent in view of section 10(3) of the Rajasthan Sales Tax Act.

3. Dissatisfied with the relief given by the Deputy Commissioner (Appeals), the petitioner-Department carried the matter in appeal before the Rajasthan Tax Board, Ajmer, who also vide order dated September 30, 2003 dismissed the appeal of the petitioner by holding that the Deputy Commissioner (Appeals) was correct and justified in allowing the relief in the light of section 10(3) of the Act and in the light of the other observations. Hence this revision petition.

4. Counsel for the petitioner, Shri R.B. Mathur, submitted that the contractor cannot be said to be involved in the business of processing. He submitted that the assessee is in the business of developing roads and for that purpose, he mixes the rody, concrete and cement and all these cannot be said to be processing. He submitted that the benefit was to be provided when one firm purchases goods by issuing "form 17" and is involved in processing. He submitted that the assessing officer was correct in his conclusion of levy of additional tax of eight per cent inasmuch as the correct rate was 12 per cent, whereas by issuing declaration "form 17", the respondent paid tax at four per cent only and therefore, the order of the assessing officer needs to be maintained and order of the Tax Board deserves to be reversed.

5. The counsel for the respondents, Shri Devendra Kumar assisted by Shri Dinesh Kumar submitted that the assessee-respondent is in the business of development of roads and is entitled to the benefit u/s 10(3) of the Sales Tax Act and since the assessee was entitled to such benefit, therefore the declaration form was issued. According to him, it is also a finding of fact that mixer of rody, concrete and cement clearly comes within the definition of "processing" and the Deputy Commissioner (Appeals) elaborately dealt this issue which has been affirmed by the Tax Board. According to the counsel for the respondents, it is a finding of fact by the two appellate authorities and no question of law is involved.

6. I have considered the arguments advanced by the learned counsel for the parties and have perused the orders passed by the lower authorities and according to me, the Tax Board has come to the correct conclusion that the assessee-respondent was entitled to purchase of high speed diesel at the concessional rate of four per cent u/s 10(3) of the Act, particularly; when u/s 10(3) of the Act clearly speaks of concessional rate of purchase in the case of mixer/processing and when all the authorities have come to the conclusion that the respondent is involved in the processing, then he was clearly entitled to purchase the goods on lower concessional rate as prescribed u/s 10(3) of the Act. Even the assessing officer when he comes to the finding that the assessee has purchased high speed diesel for processing of rody, concrete and cement, then it is clearly and categorical finding then in my view, the assessee was entitled to purchase of diesel on concessional rate by issuing declaration "form 17" in purchasing the high speed diesel at the rate of four per cent. When it is an

admitted fact that the mixer of rody, concrete and cement has been held to be involved in processing the benefit as applicable u/s 10(3) ought to have been allowed and it has rightly been allowed by the Deputy Commissioner (Appeals) and affirmed by the Tax Board.

7. Consequently, in the light of the above facts, the Tax Board as well as the Deputy Commissioner (Appeals) came to the correct conclusion. No illegality, impropriety or perversity has been noticed in the orders of the two appellate authorities. There is a concurrent finding of fact and no question of law is involved. Resultantly, the sales tax revision petition is devoid of merit and it is, hereby, dismissed. No costs.