(2009) 04 RAJ CK 0122

In the Rajasthan High Court

Commercial Taxes Officer APPELLANT

Vs

Brij Construction and Engineers RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 5A

Citation : (2010) 29 VST 62

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—This revision petition is directed against the order of the Tax Board dated January 7, 2008 whereby the Tax Board upholding the order of the Deputy Commissioner and rejecting the appeal of the Revenue held that supply of bitumen for construction of road by respondent-assessee contractor was not taxable in the hands of the assessee.

2. The respondent-assessee contractor had undertaken works contract for construction of roads under the contract awarded to him by garrison engineer in the State of Rajasthan. Supply of bitumen purchased by the respondent-assessee from a refinery situated in the State of Gujarat have been admittedly used by the respondent-contractor for execution of works contract, namely, construction of roads within the State of Rajasthan. Therefore, as far as conclusion of both the appellate authorities is concerned that that supply of bitumen did not amount to "supply or sale by the respondent-assessee to the PWD" cannot be sustained in view of law declared by the honourable Supreme Court in the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, and earlier judgment in the case of M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, From the above judgments of the honourable Supreme Court it is clear that the material supplied by the contractor for execution of the works contract amounts to supply or sale by the said contractor to the Department, namely, the awarder of the contract and it is exigible to tax under the provisions of the Rajasthan Sales Tax Act, 1994.

3. However, from a perusal of the impugned assessment order dated March 25, 2004, it appears that the respondent-assessee had obtained the exemption certificate in respect of entire works contract in question subject to payment of fixed exemption fee which was payable in instalments in the form of TDS to be done by the awarder of the contract from the payments made time to time by them to the contractor against the said works contract. The assessing authority however has imposed tax on the value of bitumen supplied by the respondent-assessee treating the same as purchased from unregistered dealers and imposed tax at 12 per cent with surcharge under the provisions of the RST Act ignoring the exemption certificate granted to the respondent-assessee in respect of entire works contract in question. This was obviously not permissible in law because the respondent-assessee availed of the facility of exemption certificate in lieu of entire tax liability under a particular works contract executed by him. He would be liable to pay exemption fee in respect of entire value of works contract including the value of bitumen supplied by him for execution of such works contract within the State of Rajasthan.

4. Accordingly this revision petition of the Revenue is disposed of by setting aside the orders passed by all the authorities below including the assessment order dated March 25, 2004, order of the Deputy Commissioner (Appeals) dated March 1, 2007 and order of the Tax Board dated January 7, 2008 and the matter is remanded back to the assessing authority to pass a fresh assessment order by imposing tax on the value of bitumen supplied by the assessee to the Department to the extent of exemption fee leviable in respect of that works contract for the said year. Since the works contract in its entirety is covered by the exemption certificate issued by the competent authority to the respondent-assessee, the assessing authority could not have obviously imposed tax u/s 5A of the RST Act treating the same as the purchases from unregistered dealers made within the State of Rajasthan. The assessing authority could have only imposed exemption fee leviable on the works contract in question as per the exemption certificate granted to the respondent-assessee and admittedly exemption fee has not been levied so far on the value of bitumen supplied either by the Department or in the form of TDS by the awarder of the contract. Since the matter is being now remanded back to the assessing authority, the assessing authority shall not be entitled to charge any interest or penalty from the respondent-assessee in respect of value of bitumen and only exemption fee at 1.5 per cent on the value of bitumen supplied by the respondent-assessee to the awarder of the contract, can be so charged and recovered.

5. With these observations, this revision petition is disposed of. No order as to costs.