

(2014) 02 RAJ CK 0177

In the Rajasthan High Court

Case No : Sales Tax Revision Petition Nos. 227, 228, 233, 234 & 235 of 2012

Commercial Taxes Officer

APPELLANT

Vs

Britannia Dairy (P.) Ltd.

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 2(36), 26, 61, 82, 83

Citation : (2014) 45 GST 244 : (2014) 76 VST 68

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : R.B. Mathur and Tanvi Sahay, Advocate for the Appellant; R.C. Agrawal, Advocate for the Respondent

Judgement

Alok Sharma, J.—Since all these revision petitions arise out of the order dated 4-7-2012 passed by the Rajasthan Tax Board, Ajmer and relate to the same legal issue, they are being decided by a common order. Facts of revision petition No. 228/2012 are being adverted to. This sales tax revision petition has been filed u/s 84 of the Rajasthan Value Added Tax Act, 2003 (hereinafter "the RVAT Act, 2003") against the order dated 4-7-2012 passed by the Rajasthan Tax Board Ajmer (hereinafter "the Tax Board"). Thereunder the inclusion of Mandi Fee payable by the purchaser to the market Committee and not the seller albeit accounted for through him under Rule 59 of the Rajasthan Agricultural Produce Marketing Rules, 1963 (hereinafter "the 1963 Rules") promulgated under Rajasthan Agricultural Produce Marketing Act, 1962 (hereinafter "the Act of 1962") within the "sale price" as defined in Section 2(36) of the RVAT Act, 2003 has been held to be illegal and set aside.

2. FACTS: The business premises of the respondent assessee was surveyed on 25-6-2010 by the Assistant Commissioner-cum-special Secretary (hereinafter "the Inspecting Authority") under powers vested in him u/s 26 of the RVAT Act, 2003. Thereupon it was noticed that the respondent-assessee (hereinafter "the

assessee") had not calculated payable VAT under the RVAT Act, 2003 by including the "Mandi Fee" which was collected by the seller and reflected in the invoices. Show cause notice as to why due tax, interest and penalty on tax short paid should not be charged. Thereafter the matter was transferred to the Commercial Tax Officer, CTO II Jaipur for disposal. The assessing authority vide order dated 31-8-2010 concluded that mandi fee collected by the assessee amounted to a pre-sale expenditure (no matter it was reimbursed by the purchaser) on which value added tax was leviable. Consequently aside of the VAT allegedly short paid interest thereon and penalty u/s 61 of the RVAT Act, 2003 also came to be visited upon the assessee. An appeal u/s 82 of the RVAT Act, 2003 to the Appellate Authority against the order dated 31-8-2010 being unsuccessful, the assessee approached the Tax Board Ajmer by way of second appeal u/s 83 of the RVAT Act, 2003.

3. Vide order dated 4-7-2012 the Tax Board held that the orders passed by the Assessing authority as also by the Appellate Authority were unsustainable in view of the fact that mandi fee under Rule 59 of the 1963 Rules, was very evidently a liability of the purchaser and not the seller. The Tax Board held that mere reimbursement of mandi fee paid by the seller on behalf of the purchaser of the agricultural product i.e. Ghee, was not liable to have to be included as a part of the seller's consideration for the sale i.e. "sale price" u/s 2(36) of the RVAT Act, 2003. The Tax Board relied upon the judgments of the Hon'ble Supreme Court in the cases of State of Punjab and Others Vs. Chhabra Rice Mills and Others, and State of Punjab v. Guranditta Mal Shrauti Prakash [2004] 9 Tax Update 103 to buttress its conclusions. It was categorically held that consequently no tax or interest was payable qua the mandi fee paid by the seller on behalf of the purchaser and subsequently reimbursed to it. Further relying upon the judgment in the case of Sree Krishna Electricals Vs. State of Tamil Nadu and Another, the Tax Board held that even otherwise the transaction having been disclosed in the books of assessee the levy of penalty with reference to Section 61 of the 2003 Act was absolutely unwarranted and illegal. So holding the Tax Board set aside the orders passed by the Assessing Authority as also the concurring order passed in Appeal.

4. Learned counsel for the Revenue Mr. R.B. Mathur submitted that the judgments relied upon by the assessee in the cases reported in Chhabra Rice Mills (supra) as also Guranditta Mal Shrauti Prakash (supra) and followed by the Tax Board pertained to provisions under the Sales Tax Laws then extant in State of Punjab which were para materia to the provisions of the RST Act, 1994 and not RVAT, 2003. It was submitted that section 2(36) of RVAT Act, 2003 was differently worded and therefore the judgments relied upon by the assessee were in apposite to the determination of the issue. It was submitted that section 2(36) of the RVAT Act, 2003 provides that any statutory levy in respect of goods transacted would be included within the sale price and exigible to tax. Default in payment of tax due-or short payment of tax inevitably carries interest and penalty. It has been submitted that the Tax Board has not adverted to this

statutory definition of the sale price u/s 2(36) of the RVAT Act, 2003 and on this count erred in excluding the statutory levy of mandi fee from the "sale price". It was submitted that in this view of the matter conclusions of the assessing authority as also the appellate authority in holding that the mandi fee under the Rules of 1963 collected by the seller for payment of the market fee albeit on behalf of the purchaser constituted part of "sale price" and non-payment of tax thereon was to be visited by recovery of tax short paid, interest and penalty was legal and proper. The submission is that the Tax Board erred in holding to the contrary. It is therefore prayed that the impugned order dated 04-07-2012 passed by the Tax Board be set aside and that of the assessing authority passed on 31-8-2010 as upheld by the appellate authority on 30-5-2011 be restored.

5. Mr. R.C. Agrawal, learned counsel for respondent assessee has supported the impugned order dated 4-7-2012 passed by the Tax Board.

6. Heard learned counsel for the parties and perused the material available on record.

Section 2(36) of the 2003 Act reads thus:--

Sale price-means the amount paid or payable to a dealer as consideration for the sale of any goods less any sum allowed by way of any kind of discount or rebate according to the practice normally prevailing in the trade, but inclusive of any statutory levy or any sum charged for anything done by the dealer in respect of the goods respect of goods or services rendered at the time of or before the delivery thereof, except the tax imposed under the VAT Act.

7. To my mind the word statutory levy in the aforesaid definition of the sale price have of necessity to be construed as a statutory levy payable by the seller and not by the purchaser. Moreso the levy should relate to the sale transaction per se between the seller and purchaser and be part of the consideration passing from the buyer to the seller. To my mind for a statutory levy to be included within "sale price" as defined in Section 2(36) of the 2003 Act it has to be a charge by the seller on any ground whatsoever and not a charge by a third party from a purchaser for general facilities in the area of sale (here the Mandi Samiti). A contrary view, in my considered opinion, would introduce an extraneous aspect in a sale transaction fundamentally a matter of contract between the seller and buyer and the sale price be determinable not on what passes as consideration but also on the other expenses incurred by the buyer elsewhere for the sale being facilitated. Aside of the aforesaid, in my considered opinion the issue agitated in the instant revision petition is wholly covered by the judgments of the Hon"ble Supreme Court in case of Chhabra Rice Mills (supra) and Guranditta Mal Shrauti Prakash (supra) wherein it has been categorically held on principle that where the market fee is payable by the buyer and the seller merely deposits the said fee on behalf of the buyer and reimburses himself, the market fee cannot form part of the sale consideration or sale price. Rule 59 of the Rules of 1963 under which the market fee is paid to the Market Committee reads as under:--

Rule 59. Recovery of Cess and Fees:

1. The cess on agricultural produce shall be payable as soon as it is bought and sold in the market area as may be specified in the bye-laws.

2. The market fees shall be paid by the purchaser in the following manner:

(i) if the specified agricultural produce is sold through an A Class Broker the A Class Broker shall charge market fees from the purchaser and deposit the same with the market Committee in accordance with the procedure specified in the bye-laws.

(ii) if the specified agricultural produce is not sold through an A class Broker, the seller shall charge market fees from the purchaser and deposit the same with the market committee in the manner specified in the bye-laws.

(iii) in the case seller is not a licensee, the market fees shall be deposited by the purchaser in the manner specified in the bye-laws.

8. Sub-rule (2) of Rule 59 of the 1963 Rules thus categorically states that market fees shall be paid by the purchaser. What follows is only a mode for collection of mandi fee. In my considered opinion the mode of collection of mandi fee cannot alter its very character and be considered as a levy on the seller. Mandi fee is to be paid by the purchaser under the Rules of 1963 to the Mandi Samiti for the infrastructure created by it for facilitating a transaction i.e. it is a charge independent of the privity of contract between the seller to the purchaser and not a part of the consideration paid to the seller by the buyer. The market fee charged by the Mandi Samiti is not a levy on the seller and thus cannot constitute statutory levy within the meaning of Section 2(36) of the RVAT Act, 2003 liable to be included in the sale price. Further in case of *George Oakes (P.) Ltd. Vs. State of Madras*, a Constitution Bench of the Hon'ble Supreme Court has observed that where in law tax is on the buyer and the dealer a mere collecting agency, it would remain outside the sale price. Consequently, I find no substantial question of law as warranted u/s 84 of the RVAT Act, 2003 made out in the present revision petitions. There is no force in the revision petitions particularly in view of the judgment of Hon'ble Supreme Court in cases of *Chhabra Rice Mills (supra)* and *Guranditta Mal Shrauti Prakash (supra)* and *George Oakes (P.) Ltd. (supra)*.

The revision petitions stand dismissed accordingly.