**(2013) 05 RAJ CK 0043**

**In the Rajasthan High Court**

**Case No :** Sales Tax Revision Petition No. 303 of 2011

Commercial Taxes Officer APPELLANT

Vs

Laxmi Roller Floor Mills RESPONDENT

**Date of Decision :** 29-05-2013

**Acts Referred:**

**Citation :** (2014) 43 GST 212 : (2013) 65 VST 379

**Hon'ble Judges :** Jainendra Kumar Ranka, J

**Bench :** Single Bench

**Advocate :** Tanvi Sahai and R.B. Mathur, for the Appellant;

## Judgement

Jainendra Kumar Ranka, J.—The Instant sales tax revision petition has been filed by the petitioner department assailing the order dated 24.3.2003 by which the appeal of the department was dismissed affirming the order passed by the Deputy Commissioner (Appeals) Brief facts giving rise to this revision petition are that the respondent is a manufacturer of cereal and is running a flour mill. During the Assessment Year 1999-2000, the respondent deposited tax as prescribed under the Rajasthan Sales Tax Act, 1994 at the rate of 4% and the same was deposited in the Government Treasury account. However, the petitioner passed an order by accepting the rate of tax at the rate of 4% but levied surcharge on the said tax amounting to Rs. 29,268/- and interest thereon. It is the claim of the respondent that there was no proper show cause notice or claim of the petitioner about levy of the additional surcharge. This was levied in violation of principles of natural justice which was not proper on the part of the Assessing Officer. It was further pleaded that under the provisions of the Act, surcharge could not have been levied as it is inter-State sale and as per notification dated 7.3.1994.

2. The matter was challenged in appeal before the Deputy Commissioner (Appeals). It was claimed that the respondent assessee is a registered dealer and it was the claim of the assessee respondent that as per notification issued by the Government of Rajasthan dated 7.3.1994, the sales tax is only leviable at the

 

rate of 4% u/s. 8(5) and u/s. 5 of the Act and even requirement of "Form C" was not there and no surcharge is leviable in a case like this. Thus, in the light of the above facts and circumstances of the case, the Deputy Commissioner (Appeals) was satisfied and directed to delete the surcharge levied Rs. 29,268/-. Dissatisfied with the deletion of surcharge, the Assessing Officer carried the matter in further appeal before the Tax Board who was also satisfied that there is no justification for levying of additional surcharge and for the reasons assigned therein, the claim of the petitioner was dismissed and accordingly the appeal was also dismissed. Hence, this revision petition.

3. The learned counsel for the petitioner submitted that the Assessing Officer was correct and justified in levying the surcharge and the same was in accordance with law and both the appellate authorities are unjustified in coming to the conclusion that no surcharge was leviable. Accordingly, the learned counsel for the petitioner pleaded that the Assessing Officer was justified in levying the additional tax and interest thereon and claim be reversed.

4. I have gone through the arguments advanced by the learned counsel for the petitioner department and have gone through the impugned orders. In my view, both, the Tax Board as also the Deputy Commissioner (Appeals), are justified in coming to the correct conclusion. The assessee had deposited the due tax in accordance with notification dated 7.3.1994 bearing No. 929, F. 4(8) FD/ Gr.-4/94-71 wherein in the case of assessee and similarly situated dealers tax rate of 4%, was prescribed. It is also stated in the said notification that even there is no requirement of filing of "Form C" when the sale is outside the State of Rajasthan. Both the appellate authorities came to the correct conclusion that u/s. 8(5) of the Central Sales Tax Act and sections 4 and 5 of Rajasthan Sales Tax Act, the tax rate is only 4% and no additional surcharge is leviable.

5. The Hon''ble Apex Court in the case of Asstt. Commissioner (Assessment), Sales Tax v. Janatha Expeller Co. [1992] 85 STC 105, came to the conclusion and held that section 8 of the Central Sales Tax Act, 1956, and the notification (Notification S.R.O. No. 117 of 1966 dated March 8, 1966) passed by the Kerala Government u/s 8(5) of the Act are absolutely clear. Additional sales tax under the Kerala Additional Sales Tax Act, 1978, is not leviable on inter-State turnover of goods (e.g. oil and cake) which are covered by that notification. The Hon''ble Apex Court in the case of Deputy Commissioner of Sales Tax Vs. Aysha Hosiery Factory (P) Ltd. and Others, , has held that additional sales tax under the Kerala Additional Sales Tax Act, 1978, could be levied on inter-State sales or purchases of goods (the goods in these cases were goods other than declared goods) in regard to which no notification has been framed u/s 8(5) of the Central Sales Tax Act, 1956, fixing as specific lower rate in the public interest.

6. The Hon''ble Kerala High Court in the case of Assistant Commissioner (Assessment), Sales Tax Vs. Janatha Expeller Company and Others, , held as under:

 

In our opinion, all that section 8(2A) provides is that the tax payable under the Central Sales Tax Act, will be, at the rate levied for the sale or purchase of the identical goods under the sales tax law of the appropriate State, subject to other conditions specified therein. In other words, the levy of tax under the Central Act will follow the levy of tax on the sale or purchase of the goods under the State law. The Act, by which the tax is levied, for the sale or purchase of the goods, under the State law, on the specified commodity, alone is relevant or should be looked into. This seems to be the plain meaning of the words used in section 8(2A) of the Central Sales Tax Act. The eye need look no further. Section 8(2A) of the Central Sates Tax Act deals with a situation different from the one contemplated by section 8(5) of the Central Sales Tax Act. The fields of operation of section 8(2A), and section 8(5) of the Central Sales Tax Act, are distinct and different. In the circumstances, we hold that the levy of additional tax u/s 2 of the Kerala additional Sales Tax Act, 1978 (Act 20 of 1978), is not exigible at all to a case where tax is payable u/s 8(5) of the Central Sales Tax Act. We are also of the view, that even in cases where tax is exigible u/s 8(2A) of the Central Sales Tax Act for the inter-State sales, the Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978), has no application.

As stated already, in cases where the tax is payable u/s 8(2A) of the Central Sales Tax Act, what is crucial or relevant is to ascertain, the appropriate sales tax law of the State, under which the tax is levied for the sale or purchase of the goods or the commodity, in question. Looked at from the angle, we have no doubt, that the appropriate sales tax law of the State, of which tax is levied, is the Kerala General Sales Tax Act, 1963. The Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978), does not levy sales tax on the sale or purchase of the goods or commodity, in question. We hold that the provisions of Act 20 of 1978 are inapplicable to a situation, where inter-State sales are to be taxed u/s 8 or section 8(2A) or section 8(5) of the Central Sales Tax Act.

7. This judgment was affirmed by the Hon''ble Apex Court in Janatha Expeller Co''s case (supra).

8. The Hon''ble Madras High Court in Sree Ayyanar Spg. & Wvg. Mills Ltd. v. State of Tamil Nadu [1998] 109 STC 205, exactly on identical issue held as under:

Allowing the petition, that from the language employed in the notification, it was clear that that there were no areas of limitation therein, so as to restrict the operation of the notification, with reference to sub-section (1) of section 8 of the Central Sales Tax Act. The words or the expressions employed in clause (ii) of the said notification, were "the tax payable under the said Act" shall be calculated at the lower rate of two per cent. Section 8 of the Act prescribes the rate of tax on sales in the course of inter-State trade or commerce, while section 6 is a charging provision. The notification, did not at all say that the rate payable by dealers was with reference to sub-section (1) of section 8 or with reference to sub-section (2) of section 8 of the Act. But, the words employed, as already indicated, categorically indicated that the rate of tax payable under the said Act, meaning thereby-whether it be under sub-section (1) or (2) of section 8 -shall be calculated at the lower rate of two per cent. The power of the State Government under sub-section (5) of section 8 is wide enough to reduce the rate of tax either under sub-section (1) or (2) in respect of any dealer or in respect of sales of goods or sales of such class of goods by the issuance of a notification in the public interest, subject to such conditions, as may be specified therein, apart from the power to exempt payment of tax in respect of inter-State sales effected. While issuing such a notification covering the instant case, the State Government had exercised its power to the fullest extent possible and with intent to give relief to the tax-payers, like the petitioners, in the sense of calculating the levy at the lower rate of two per cent, even in cases governed by sub-section (2) of section 8 of the Act. Moreover it was impressible to add additional sales tax to the lower rate of levy made in the public interest, in respect of the goods, to which a notification had been framed under sub-section (5) of section 8 of the Act. The order of the Tribunal, adding the rate of levy of two per cent, by way of additional sales tax to the lower rate of levy at two per cent imposed, pursuant to the notification issued by the State Government, under subsection (5) of section 8 of the Act was not sustainable in law.

9. Thus, in the light of the above facts and circumstances of the case and the judgments of the Hon''ble Supreme Court and other courts, there was no occasion of levying additional tax as it could not have exceeded the rate prescribed at the rate of 4% u/s 8(1) of the Act. It is also clear on perusal of the assessment order that no case was made out by the Assessing Officer that the case of the assessee respondent falls within the provisions of section 8(3) of the Central Sales Tax Act.

10. Consequently, in the light of the above facts and judgments of the Hon''ble Apex Court, in my view, 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 arises, particularly; in view of the judgments of the Hon''ble Apex Court. Accordingly, the sales tax revision petition has no force and it is, accordingly, dismissed.