(2013) 03 RAJ CK 0090

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 64 of 2009

Commercial Taxes Officer APPELLANT

Vs

L.G. Electronics India Limited and Another RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 2(39)
Rajasthan Sales Tax Rules, 1995 — Rule 25(1)(b)

Citation : (2013) 200 ECR 318 : (2013) 64 VST 347

Hon'ble Judges : Jainendra Kumar Ranka, J

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of R.B. Mathur, for the Appellant; T.C. Jain, for the Respondent

Judgement

Jainendra Kumar Ranka, J.—This sales tax revision petition has been preferred by the petitioner-Department assailing the order dated May 13, 2008, passed by the Rajasthan Tax Board, Ajmer (for short, "Tax Board"), dismissing the appeal of the petitioner-Department and upholding the order dated January 25, 2007, passed by the Deputy Commissioner (Appeals) (for short, "DC(A)"). The brief facts, emerging from the face of record, are that the respondent-assessee is a limited company and was manufacturing refrigerators, TV, washing machines, etc., and was allowing discount on the occasion 6t festivals or on other occasions and had also placed on record copies of the various schemes prevalent during the relevant period and contended that the sales tax is chargeable on the discounted price and not on the gross value of the items as ultimately the respondent-assessee received only the net value and was liable to pay tax only on the net value. In addition to the items manufactured by the respondent-assessee of its own, the respondent-assessee was also carrying trading of similar or other items which were not manufactured by it or manufactured by other companies. It was pleaded by the respondent-assessee that the claim remains the same whether the items are manufactured by it or traded by it and the scheme was applicable on all products whether manufactured by it on its own or otherwise and, therefore, both are at par and cannot be distinguished. However, while the petitioner-Department was satisfied with regard to charging of sales tax on the net value after discount, in so far as the items manufactured by the respondent-assessee, is concerned but the assessing officer denied the benefit on other items being traded by it of other companies and accordingly levied tax on the entire gross amount and thus levied differential tax only on the goods traded of other companies.

2. Being dissatisfied with the order, the matter was carried in appeal by the respondent-assessee before the learned DC(A) and it was submitted that the petitioner-Department was unjustified in applying two standards while the facts are common to both whether the items/goods were manufactured by the respondent-assessee or the items/goods traded by it. It was further submitted that the discount was granted as per the schemes available on various festivals like Holi, Diwali, New Year, etc., as is being allowed by various other dealers to allure the customers so that the customers are attracted and that ultimately the respondent-assessee received the discounted/net value and the sales tax was to be charged on the net value rather than on gross value.

3. The learned DC(A) was satisfied with the contention raised by the respondent-assessee and accordingly vide order dated January 25, 2007 allowed the claim of the respondent-assessee.

4. Dissatisfied with the order passed by the learned DC(A) the petitioner-Department preferred an appeal before the learned Tax Board who also vide order dated May 13, 2008 did not find any error in the order passed by the learned DC(A) and held that the learned DC(A) was correct and justified in directing to levy sales tax only on the net amount received by the respondent-assessee and accordingly rejected the appeal of the petitioner-Department.

5. Dissatisfied with the said order, the petitioner-Department has preferred this revision petition before this court.

6. Ms. Tanvi Sahai, appearing on behalf of Mr. R.B. Mathur, learned counsel for the petitioner-Department vehemently submitted that the Tax Board was unjustified in rejecting the appeal of the petitioner-Department as the tax was liable, to be levied on the gross turnover only and not on the net value. The respondent-assessee failed to make out any case during the course of assessment proceedings as to, on what basis the discount was given and the, discount, if any was given by it was at its own whims and fancies and there was no fixed policy of granting discount. It was further submitted that in so far as the respondent-assessee is concerned, on its own manufactured products, the assessing officer had rightly allowed discount but for other traded goods, the assessing officer was just and reasonable in charging sales tax on the entire gross value and that the learned DC(A) as well as the learned Tax Board were unjustified in passing the orders impugned.

7. Shri T.C. Jain, learned senior counsel for the respondent-assessee, opposed

the arguments of the learned counsel for the petitioner-Department and submitted that in so far as this issue is concerned, it has been considered by this court in the dispute between the same parties and this court in the S. B. Sales Tax Revision Petition No. 41 of 2007, CTO v. L.G. Electronics (India) Pvt. Ltd. vide order dated January 24, 2007 had dismissed the revision petition preferred by the petitioner-Department against the same assessee.

8. The learned counsel for the respondent-assessee also drew attention of this court towards definition of word "turnover" as provided u/s 2(39) of the Rajasthan Sales Tax Act, 1994. He further drew attention of this court towards rule 25(1)(b) of the Rajasthan Sales Tax Rules, 1995 and submitted that if plain and simple language of section 2(39) of the Act read with rule 25(1)(b) of the Rules is read as a whole, then only on net turnover, the sales tax was chargeable and the assessing officer was unjustified in coming to his own conclusion.

9. The learned counsel for the respondent-assessee further relied upon the judgment of the apex court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Motor Industries Co., Ernakulam, He further relied upon judgment of this court in the case of Commercial Taxes Officer Vs. Tata Oil Mills Ltd., He further placed reliance upon judgment of the apex court in the case of IFB Industries Ltd. Vs. State of Kerala, and submitted that the order of the Tax Board deserves to be upheld. He further submitted that it is a finding of fact and no ''question of law arises as both the appellate authorities have come to a definite conclusion on finding of fact.

10. I have considered the arguments advanced by learned counsel for the parties and perused the material available'' on record including the judgments and the provisions of the Act and Rules (supra) on which reliance has been placed by learned counsel for the respondent-assessee. It is appropriate to reproduce section 2(39) of the Rajasthan Sales Tax Act, 1994 which reads as under.

Section 2. (39) ''sale price'' means the amount paid or payable to a dealer as consideration for the sale 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 sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof;

Explanation I.--In the case of a sale by hire purchase agreement the prevailing market price of the goods on the date on which such goods are delivered to the buyer under such agreement, shall be deemed to be the sale price of such goods.

Explanation II.--Where according to the terms of a contract, the cost of freight and other expenses in respect of the transportation of goods are incurred by the dealer for or on behalf of the buyer, such cost of freight and other expenses shall not be included in the sale price but the burden of such proof shall lie on the dealer.

11. Rule 25(1)(b) of the Rajasthan Sales Tax Rules, 1995 reads as under:

Rule 25(1)(b). all such sums allowed as discount or rebate in accordance with the terms of the contract, where the accounts show that the purchaser has paid only the sum originally charged less the discount or rebate.

12. Thus the plain and simple language is quite clear.

13. The honourable apex court in its judgment in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Motor Industries Co., Ernakulam, has held as under:

...Ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction under clause (a) of rule 9 of the Rules....

14. It has further been held by the honourable apex court in the aforesaid judgment as under:

...The discount so allowed is merely a percentage of the price of the goods sold which has nothing to do with any other goods supplied or other service rendered by the buyers to the assessee. The fact that the discount is not allowed at the time of sale but on. a later date at the end of the month would not make it any-the-less a trade discount.

We are, therefore, of the view that the High Court has rightly upheld the deduction of the ''service discount'' claimed in this case by the assessee from the total turnover. The appeal should therefore, fail in so far as this part of the case is concerned.

15. The honourable apex court in its judgment in the case of IFB Industries Ltd. Vs. State of Kerala, : IFB Industries Ltd. Vs. State of Kerala, has held as under:

Before parting with the case, we may state that so far as the special discount is concerned, all that the authorities have to look into whether as a matter of fact, the petitioner received only the sum originally charged less the discount. It is the look out of the traders to see that the trade increase and it is for that purpose the trade discount is given. Hence, a person may not be able to clearly prove as to why the special discount was given. But if there has been a consistent practice of giving special discount, that has to be accepted by the assessing authority.

On the basis of the discussions made above and in light of the earlier decisions of the court, we are unable to sustain the orders of the Kerala High Court coming under appeal. The impugned orders in both the appeals are set aside. The cases of the appellants for the respective assessment periods are remitted to the assessing authority with a direction to make assessments and pass fresh orders in accordance with law and in light of this judgment. The assessing authority shall not reject the appellants'' claim for exemption of the amounts of trade discount solely on the ground that the discount amounts were not shown in the sale invoices.

16. This court in the case of Commercial Taxes Officer Vs. Tata Oil Mills Ltd., has

held as. under:

Having heard both the sides, I am satisfied that this revision by the Department, must fail since the view taken by the Tribunal, is justified. Explanation (iii) to the definition of ''turnover'', contained in section 2(t) of the Act, is wide enough to cover such a deduction. It permits deduction of any amount which is allowed from the price in respect of any sale, and the expression ''in case or other discount'' is wide-enough to cover a deduction of this kind given out of the price of the goods. The fact that the deduction was given at a subsequent date while actually ascertaining the sale price does not adversely affect this consequence or construction of Explanation (iii) to section 2(t). In substance, turnover means the aggregate of the amount of sale prices received or leviable by a dealer, and therefore, taxable turnover cannot obviously include an amount not received by the dealer as a part of the sale price.

17. After hearing counsel for the parties and going through the material on record including the judgments and the provisions of the Act and Rules, relied upon by learned counsel for the respondent-assessee, this court agrees with the finding of the Tax Board that the sales tax was leviable only on the value received as net consideration by the respondent after discount and not on the gross value. Section 2(39) of the Act and rule 25(1)(b) of the Rules, which have been reproduced hereinabove, also clearly demonstrate that the tax was leviable after discount having been allowed by a trader and, therefore, the Tax Board was justified in coming to the conclusion. The judgments, relied upon by the learned counsel for the respondent are also squarely applicable in the facts and circumstances of the case.

18. In view of the above facts and circumstances, no question of law is found to be involved in the present case and such finding, being essentially a finding of fact, this court does not find any manifest error or infirmity and perversity in the orders impugned passed by the learned Tax Board and the DC(A) so as to call for any interference of this court. Consequently, the petition as well as stay petition, being devoid of merit, stands dismissed. No costs.

