
(2013) 09 RAJ CK 0202

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 182 of 2005

Commercial Taxes Officer

APPELLANT

Vs

Madad Ali Ansari and Co.

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 86(2)

Citation : (2014) 43 GST 311 : (2014) 69 VST 305

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Falgun Buch and V.K. Mathur, for the Appellant; Vikas Balia, for the Respondent

Judgement

P.K. Lohra, J.—The petitioner has preferred this revision petition u/s 86(2) of the Rajasthan Sales Tax Act, 1994 (for short, "Act of 1994") against the impugned order dated 16th of March 2004 passed by the learned Tax Board, Ajmer. Brief facts, giving rise to the present petition, are that the respondent assessee, a contractor of MES, entered into an agreement with Garrison Engineer, Air Force, Uttarlai, in respect of construction of buildings, and purchased material on "C" form declaration in terms of Rule 12(5) of the Central Sales Tax (Registration & Turnover) Rules 1957 out of the State, for which the assessee was issued exemption certificate. The assessing authority, while making assessment, added the transportation charges and profit on the goods purchased from outside Rajasthan on declaration "C" and also imposed surcharge and interest on the ground that the assessee had not complied with the Condition No. 4 of the Notification dated 28.04.1993 issued by the State Government u/s 4(2) of the Rajasthan Sales Tax Act 1954 (for short, hereinafter referred to as "the Act of 1954"), which is analogous to Section 15 of the Act of 1994. The learned assessing authority, after considering the matter imposed tax of Rs. 2,30,109, surcharge Rs. 56,289, penalty u/s Rs. 22,560, and interest u/s 58 Rs. 1,48,916 and concluded that the said amount is chargeable from the respondent-assessee, as such, passed orders for issuance of demand notice against the assessee for

total amount of Rs. 4,57,853.

2. Being aggrieved from the assessment order, the respondent-assessee preferred an appeal u/s 84 of the Act of 1994 before the learned Dy. Commissioner (Appeals), Commercial Taxes, Jodhpur. The appellate authority, after analyzing all the pros & cons in the light of the Act of 1994 and Central Sales Tax Act 1956 concluded that Section 4(2)/15 of the Act of 1994 refers to declaration for tax exemption by the assessee with reference to tax liability of the assessee under the Act of 1994 and the declaration so made by the assessee for seeking tax exemption cannot be pressed into service vis-?-vis the Central Sales Tax Act. The appellate authority further held that under the Act of 1956 any purchase under the "C" forms at the rate of tax rebate, no restriction is envisaged within four corners of Section 4(2)/15 of the Act of 1994. With these conclusions, the learned Deputy Commissioner (Appeals) found the assessment order infirm and categorically held in its order that the assessing authority has not properly construed and interpreted Section 4(2)/15 of the Act of 1994. The appellate authority further held that the assessing authority has shown over-enthusiasm while interpreting the provisions of law by giving extended meaning to the intent of the legislation. Finally, the appellate authority allowed the appeal and quashed the assessment order passed by the assessing authority. While rendering its decision, the appellate authority has also placed reliance on the decision of the learned Rajasthan Tax Board.

3. Feeling dissatisfied by the order of the Deputy Commissioner (Appeals), the petitioner Revenue has assailed the same by way of appeal before the learned Tax Board, and the learned Rajasthan Tax Board, while fully concurring with the findings and conclusions of the appellate authority, declined to interfere in the matter and dismissed the appeal.

4. Learned counsel for the petitioner Revenue has argued that the learned Tax Board has committed grave and serious error of law in rejecting the appeal of the Revenue, and therefore, the impugned order cannot be sustained. Learned counsel for the petitioner has urged that the interpretation of Section 4(2)/15 of the Act of 1994 by the learned Deputy Commissioner (Appeals) was per se erroneous and by concurring with the said interpretation the learned Tax Board has committed the same folly, which has resulted in huge loss of revenue at the cost of unjust enrichment of the respondent assessee, With these arguments, the learned counsel for the petitioner has strenuously urged that the order impugned is liable to be reversed and set aside.

5. Per contra, Mr. Vikas Balia, learned counsel for the assessee, has submitted that the Act of 1994 and the Act of 1956 are two different legislations covering two different spheres and any transaction which is subject matter of exemption/ rebate under the Act of 1956 cannot be examined within the four corners of the provisions of the Act of 1994. Mr. Balia submits that rigour of Section 4(2)/15 of the Act of 1994 cannot be pressed into service vis-?-vis a transaction for which tax exemption is claimed by the assessee under the Act of 1956. Thus, the sum

and substance of the submission of the learned counsel for the respondent is that the conclusion of the Deputy Commissioner (Appeals) and its affirmation by the learned Tax Board cannot be faulted and no interference with the impugned order in exercise of revisional jurisdiction of this Court is warranted. Mr. Balia would urge that there is a concurrent finding of fact by both the courts below, and that being so, no question of law being involved in the matter, the revision petition merits dismissal.

6. I have heard the learned counsel for the parties, perused the impugned order, and scanned the entire record of the Tax Board.

7. The core issue requiring adjudication in this revision petition hovers around interpretation of Section 4(2)/15 of the Act of 1994 and how and in what manner these provisions are to be construed to discredit the exemption on purchase of material by declaration of "C" Form out of the State. The aforesaid tax rebate on purchase of material was declined by the assessing authority on the anvil of Section 4(2)/15 of the Act of 1994 by relying on a Notification of the State Government dated 28th of April 1993, which was issued in exercise of powers conferred on the State under the Act of 1954 and eventually the assessing authority has fastened the liability of tax with surcharge, penalty and interest under the various provisions of the Act of 1994. The first appellate authority, Deputy Commissioner (Appeals) while construing the Notification dated 28th of April 1993 on the anvil of the Act of 1956 has concluded that the assessing authority has misconstrued the said notification to assessee's detriment and accordingly the entire tax liability of the assessee was done away by allowing the appeal. The learned tax Board, on an appeal preferred by the Revenue has fully concurred with the reasoning and the conclusions of the first appellate authority and maintained the order passed by it. On analyzing the issue involved in the matter threadbare, the considered opinion of this Court is that there remains no quarrel that any notification issued under the Act of 1954 cannot discredit the rebate claimed by an assessee on purchase of material by declaration under "C" form in adherence of the Act of 1956. There cannot be two opinion that the Act of 1994 and the Act of 1956 are separate and distinct enactments covering different spheres, and any notification issued under the Act of 1994, therefore, ipso facto cannot be applied vis-?-vis a transaction for which tax rebate is claimed by the assessee within the four corners of the Act of 1956. The concurrent finding of fact arrived at by both the Courts below in the given circumstances has persuaded this Court not to concur with an illogical conclusion of the assessing authority. The learned counsel for the Revenue has not been able to lay his hand on any of the binding legal precedent throwing light on the matter in issue so as to interfere with this concurrent finding of fact. On the contrary, the consistent view of the Tax Board in earlier verdicts also supports the cause of the assessee. On critical analysis of the issue, the irresistible conclusion of this Court is that the analogy applied by both the Courts below to brush aside the theory canvassed by the Revenue that the Notification dated 28th of April 1993 issued by the State Government under the Act of 1954 be

applied in a case of transaction for which tax rebate is claimed by the assessee under the Act of 1956, cannot be faulted, nor the same can be categorized as infirm from any stretch of imagination. Thus, in totality, no question of law is involved in this revision petition requiring adjudication in exercise of revisional jurisdiction u/s 86 of the Act of 1994. The upshot of the above discussion is that the instant revision petition sans merit and the same is therefore dismissed.