(2013) 02 RAJ CK 0193

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 70 of 2010

Commercial Taxes Officer APPELLANT

Vs

R.S. Metals Ltd. RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2014) 71 VST 255

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Judgement

Jainendra Kumar Ranka, J.—This sales tax revision petition has been preferred by the petitioner-Department assailing the order dated February 22, 2010, passed by the Rajasthan Tax Board, Ajmer, setting aside the order dated February 14, 2008, passed by the Commissioner, Commercial Taxes and remanding/restoring the matter back to the assessing officer for passing fresh assessment order for the assessment year 1994-95 after providing opportunity of being heard to the respondent. The brief facts are that the respondent is dealing in cooper cadmium wires, bars, rods. Non-ferrous rods, pipes, strips, section, tubing, etc., are liable to be taxed at the rate of one per cent, according to Notification No. 72/29 dated December 31, 1975 and in accordance with Notification No. 72/15 dated May 20, 1976, non-ferrous wire is also liable to be taxed at the rate of one per cent.

2. The assessing officer issued a notice claiming as to why the originally completed assessment made by levying tax at the rate of one per cent, be not reopened and fresh assessment may not be made by levying additional tax at the rate of three per cent, with interest and penalty.

3. It was claimed by the respondent that during the assessment year 1994-95, there was no turnover of copper wire bars, however, despite of this, the assessing officer applied rate of four per cent, in terms of notification dated May 20, 1976. Accordingly, after passing the order, the assessing officer levied tax to the extent of Rs. 79,598 and also levied interest u/s 58 to the extent of Rs. 1,59,196, totalling Rs. 2,38,794.

4. Against this assessment order, the respondent preferred a revision petition before the Commissioner, Commercial Taxes, u/s 87, which was dismissed and it was held by the Commissioner that it was neither prejudicial nor erroneous. Before the Commissioner, Commercial Taxes, it was further claimed that the turnover is not part of inter-State sale and the disputed turnover of Rs. 26,53,294 is sale within the State and tax at one per cent, is applicable and in accordance with the same, the tax stands deposited. During the course of hearing, the respondent also gave declaration bearing Nos. 31601, 31602 and bill Nos. 456 and 457 justifying that the sale is within the State and, therefore, the additional levy of tax claiming it to be inter-State sale is wholly illegal, unjustified and bad in law and consequently, the interest is also liable to be deleted.

5. An appeal was preferred by the respondent before the learned Rajasthan Tax Board (for short, "the Tax Board") and the claim was reiterated arid it was further submitted that it is unjustified on the part of the assessing officer in not accepting the sale as the sale within the State and in treating the sale as inter-State sale when all material evidences were placed before it and there was no contrary evidence or material to disbelieve the said version. It was also claimed that an application ''for rectification was also moved along with affidavit but the same stood summarily rejected. The learned, Commissioner also did not apply his mind and rejected the revision petition.

6. It was also further claimed that even the Assistant Commissioner, in one of its letter bearing No. 1001 dated February 13, 2008, which was passed u/s 87, stated as under:

7. Thus, it was held that that the disputed turnover was within the State and by mistake it was held as inter-State sale and that interest can also be waived.

8. Considering the same, the Rajasthan Tax Board was of the opinion that in view of the above letter of the Revenue itself (Assistant Commissioner, Special Circle-III, Jaipur) it is abundantly clear that it is sale within the State and that entire tax was deposited and set aside/restored the matter to the assessing officer to frame assessment de novo.

9. After hearing Ms. Tanvi Sahai, learned counsel for the petitioner-Department at length and on perusal of the order of the Rajasthan Tax Board, it reveals that nothing has been decided by the Rajasthan Tax Board and the matter has been simply restored/remanded to the file of the assessing officer to frame the assessment de novo, after providing an opportunity of being heard to the represent-assessee.

10. This court further notices that when bills and vouchers have been placed on record which clearly prove that the turnover was within the State and there is no contrary material, then the Rajasthan Tax Board was justified in setting aside the assessment with the direction to the assessing officer to look into each and every aspect in accordance with law and after hearing the respondent-assessee.

11. Since both the parties would get fresh opportunity, therefore, this court feels that no question of law arises out of the order of the Rajasthan Tax Board so as to call for any interference of this court. This court does not find any perversity in the order of Rajasthan Tax Board as opportunity has been granted to the assessing officer to look into each and every aspect with directions to provide an opportunity of being heard to the respondent.

12. In view of above facts and circumstances, the instant revision petition filed by the petitioner u/s 84 of the Rajasthan Value Added Tax Act, 2003 deserves to be dismissed. Consequently, the revision petition, being devoid of merit, is hereby dismissed.