
(1988) 05 RAJ CK 0041

In the Rajasthan High Court

Case No : Sales Tax Revision No. 164 of 1987

Commercial Taxes Officer

APPELLANT

Vs

Sardul Textiles Mills

RESPONDENT

Date of Decision : 06-05-1988

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 16(1)(c), 6C(2)

Citation : (1988) 71 STC 223

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : Rajesh Balia, for the Appellant; Vineet Kothari, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—This revision is directed against the order of the Rajasthan Sales Tax Tribunal, Ajmer, dated January 31, 1986, whereby the appeal of the department was dismissed.

2. Two questions of law have been urged in the present revision petition :--(1) Whether, in the facts and circumstances of the case, the Tribunal was justified in setting aside the penalty of Rs. 2,950 imposed u/s 6C(2) of the Rajasthan Sales Tax Act. (2) Whether, in the facts and circumstances of the case, the Tribunal was justified in setting aside the tax and penalty imposed in respect of sales made by M/s. Sardul Textiles Mills in its canteen account u/s 16(1)(c).

3. The Commercial Taxes Officer by his order dated 12th October, 1976 determined the tax liability in respect of the canteen sales to the tune of Rs. 450 and imposed penalty of Rs. 900 for non-submission of the quarterly returns and further found that the assessee purchased silicate, tinopole and caustic soda to the tune of Rs. 33,622 u/s 5C against the S. T. form No. 17. These articles were not raw materials as none of them became ingredients of the finished product and as such after notice to the assessee, imposed a penalty of Rs. 2,950 u/s 5C(2).

4. The assessee went in appeal before the Deputy Commissioner (Appeals), who by his order dated 29th January, 1980 accepted the appeal partially and set aside the tax on canteen sales as well as the penalty imposed u/s 16(1)(c) and he also set aside the penalty u/s 5C(2) observing that the commodities purchased by the assessee are used for processing of goods and they are necessary for the same. On appeal, by the department, the Tribunal upheld the appellate order of the Deputy Commissioner (Appeals).

5. I have heard Shri Rajesh Balia, learned Counsel for the department and Shri Vineet Kothari, learned Counsel for the assessee.

6. It may be stated that the Deputy Commissioner (Appeals) as well as the Tribunal has nowhere categorically found that the goods, viz., silicate, tinopole and caustic soda, became the ingredients of the finished products. Without such a finding these goods cannot be considered to be raw material, as defined u/s 2(mm) of the Rajasthan Sales Tax Act. Until and unless such a finding is reached, the provisions of Section 5C(2) would not be attracted. The assessing authority, no doubt mentioned that the aforesaid goods have not become ingredients of the finished goods, so they would not be considered raw materials. Having given this finding the assessing authority proceeded to issue notice u/s 5C(2) of the Act and imposed the penalty. In the appeal by the assessee and further in the appeal before the Tribunal, this aspect ought to have been examined as to whether the three commodities became ingredients of the finished products or not. This Court had an occasion to consider the question, that is, what is the correct meaning of the expression "raw material". In this connection, reference may be made to Commercial Taxes Officer, Pali v. Lodha Fabrics, Pali a case reported in (1988) 24 STL 241 (Raj). In the light of the aforesaid decision the matter requires further examination and consideration. It would not be proper for this Court to enter into this controversy in this revision petition. It would be for the Tribunal to examine this question.

7. As regards the second question relating to tax liability and liability for penalty on canteen sales, it may be stated that the Tribunal simply proceeded on the basis of the decision of this Court in Assistant Commercial Taxes Officer Vs. Mansarowar Cold Drinks, In view of this decision, the Tribunal held that the sales by the restaurant are not liable to tax. The Tribunal did not examine the question as to what is the effect of the Constitution (Forty-sixth Amendment) Act, 1982 which came into force on February 2, 1983. The provision of Section 6 of the aforesaid Act is a provision relating to validation and exemption. Sub-section (1) of Section 6 contains the validation clause, which Sub-section (2) provides for exemptions in certain situation, notwithstanding the provision contained in Sub-section (1), and Sub-section (3) provides for removal of certain doubts. The Tribunal ought to have examined the levy of sales tax and levy of penalty in the light of the provision contained in Section 6 of the Constitution (Forty-sixth Amendment) Act, 1982. I need not examine as to what issues may arise between the parties relating to the aforesaid provisions. It would be open to the

parties to take such stands as they like and raise issues arising from the above provisions, but the examination of the question is a must in the light of the provision of Section 6 of the aforesaid Act. This Court would have gone into the various issues arising from Section 6 of the aforesaid Act but as the issues may have some relation with the facts also, so, it would be proper that an opportunity may be afforded to the parties to bring to the notice of the Tribunal all necessary facts for determining the issues, which they want to agitate in the light of the provision of Section 6. Thus, it would be proper that the matter may be sent back to the Tribunal to examine the above questions.

8. In the result, this revision is allowed, the order of the Tribunal is set aside and the matter will go back to the Tribunal with the direction that the Tribunal shall decide the appeal afresh in accordance with law, after giving an opportunity of hearing to both the parties on the aforesaid questions. It would be open to the parties to produce relevant material and evidence for arriving at appropriate conclusions on the legal issues, which may be involved.

9. The parties shall bear their own costs.