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(2008) 12 RAJ CK 0044

In the Rajasthan High Court

Commercial Taxes Officer APPELLANT

Vs

Shri Ram Plaster RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2009) 12 Vat Reporter 15

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition has been filed against the order dated 16.9.2003 whereby the Tax Board has held in favour of the respondent-assessee manufacturing plaster of Paris that he was entitled to the benefit of Incentive Scheme and State Level Committee was not justified in refusing the same.

2. Learned Counsel for the respondent-assessee submits that this controversy is covered by the various decisions of this Court including one in case of CTO, Rajsamand v. Surana Minerals Pvt. Ltd. and Anr. This Court in the aforesaid judgment held as under:

It may be recalled that this distinction has also been noticed by the Supreme Court in Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Cursher (P) Ltd. (2000) 118 STC 287. The Court was considering the question of manufacturing process where taxable item stated in the schedule of rates was stone. The Court considering the decision giving by the Karnataka Sales Tax Tribunal in Reliable Rocks Builders and Suppliers v. State of Karnataka (1982) 42 STC 110 wherein the activity of converting stone into marketable commodity was held to be manufacture, was not over-ruled, but was distinguished on the basis of entry in the concerned schedule of rates. The Court explained referring to Karnataka decision that it turned on the concept of consumption of goods for the purposes of bringing into existence new goods and said:

In that case the Court was not concerned with an entry of the nature with which we are concerned in the present case.

In the case before the Supreme Court where goods mentioned in the schedule of rates was stone. In the context of said entry the Court said that stone, as such, and other articles of stones are all similar in nature though by size they may be different. The entry with which the Supreme Court was concerned was ''stone and any article made of stone''. Obviously, if stone as stone has attracted the tax in the first point, subsequent sale of article made of that stone would fall in the same category of the schedule.

So far as Lal kunwa''s case was concerned so also the case of Reliable Rocks Builders and Suppliers turned on the concerned of functional utility of the goods derived by building process as was held by this Court in Prakash Udhyog referred to above.

In this view of the matter, I am of the opinion that the DLSC was not right in rejecting the application of respondent without examining the issue on aforesaid principles in respect of both the activities. The Tax Board, therefore, was right in remanding the case to the DLSC for considering the case of the respondent in respect of its activity of making powder out of dolomite and marble. The answer will depend on the finding reached on aforesaid principles.

I refrain from making any comments on merits. This revision Petition is, accordingly, dismissed with no order as to costs.

3. Learned Counsel for the revenue though does not dispute the position of the judgment of this Court, however, submits that against the previous judgment rendered by this Court, SLP has been granted by the Supreme Court and the matter is pending before the Apex Court. However, there is no stay of High decision from the Hon''ble Supreme Court.

4. On the contrary, learned Counsel for the respondent-assessee submits that if the matter is kept pending and the State Level Screening Committee does not decide the case of the respondent-assessee in the light of the directions of Tax Board then the period which would lapse in between would defeat the very purpose of the respondent-assessee and may never get the benefit of incentive scheme.

5. He also submits that other similarly situated assessees manufacturing plaster of paris are receiving the benefits under the same Incentive Scheme of 1987 under which the respondent-assessee is claiming & thus competitive edge of petitioner is lost.

6. In view of the aforesaid submissions and consistent decisions of this Court, this revision petition of the Revenue is liable to be dismissed as the activities of manufacture of plaster of paris can be construed to be falling within the definition of manufacturing as defined in RST Act, 1994 in view of aforesaid quoted decisions.

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7. In view of the aforesaid decisions, the Tax Board cannot be said to have erred in holding that the respondent was entitled to avail the benefit under the Incentive Scheme and accordingly the SLSC should re-consider its application. The SLSC may decline the application of the respondent-assessee within a period of three months from today in accordance with this judgment.

8. The present revision petition of Revenue is accordingly dismissed. No order as to costs.

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