(2008) 07 RAJ CK 0019

In the Rajasthan High Court

Commercial Taxes Officer (WC and LT) APPELLANT

Vs

Unique Precured Retreaders RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 37

Citation : (2010) 29 VST 484

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—Heard the learned Counsel for the petitioner-Revenue.

2. This revision petition is directed against the order of the Tax Board dated July 10, 2007 whereby the learned Tax Board held that there was no justification on the part of appellate authority, namely, Deputy Commissioner (Appeals) to remand the case back to the assessing authority vide order dated November 9, 2005 as the assessing authority had already passed the impugned assessment order dated October 14, 2003 invoking powers u/s 37 of the Rajasthan Sales Tax Act, 1994 for rectification of apparent mistake akin to Section 17 of the earlier Act of 1954. The learned Tax Board held that since import of raw material like binding gum and rubber in the State for use thereof in tyre retreading was not exigible to works contract tax in view of the Supreme Court decision in the case of 20th Century Finance Corpn. Ltd. v. State of Maharashtra reported in [2000] 119 STC 182 and therefore, the controversy involved in appeal before the Tax Board was covered by the decision of the apex court that no such tax can be imposed in the hands of the respondent-assessee, the Tax Board being final fact finding body found that since the case was covered by the decision of the apex court and no tax could be imposed on import of binding gum and rubber for the purpose of tyre retreading, there was no justification for remanding the case back to the assessing authority.

3. The learned Counsel for the petitioner-Revenue has submitted that the learned Tax Board ought not to have interfered with the remand order and allowed the

assessing authority to pass fresh order in accordance with remand order passed by the learned Deputy Commissioner (Appeals).

4. This Court finds no force in this submission of the learned Counsel for the petitioner-Revenue because the Tax Board being final fact finding body and final appellate authority under the provisions of RST Act is superior authority over the first appellate authority and its powers to decide appeal are conferred u/s 85 of the RST Act, 1994. It has its own power to go into the questions of fact and record the findings of fact and decide the question of law arising before it. The Revenue cannot contend that the Tax Board should not interfere with the remand order passed by the first appellate authority and record its own finding on the question of fact and law involved in the matter before it.

5. This Court also find no illegality in the finding and conclusion drawn by the Tax Board on the basis of apex court''s decision. Therefore, this Court is satisfied that the order of the Tax Board does not require any interference in the revisional jurisdiction of this Court.

6. The revision petition is found to be devoid of merit and the same is accordingly dismissed in limine. No order as to costs. A copy of this order be sent to the respondent-assessee.