(2014) 01 RAJ CK 0084

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 302 of 2011

Commercial Taxes Officers APPELLANT

Vs

Tonu Constructions RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 74 VST 382

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : R.B. Mathur, Advocate for the Appellant

Judgement

Bela M. Trivedi, J.—The present sales tax revision petition has been filed by the petitioner-Department under section 86 of the Rajasthan Sales Tax Act, 1994, against the order dated July 18, 2002 passed by the Member, Rajasthan Tax Board, Ajmer (hereinafter referred to as "the Board") in Appeal No. 1055/1998/ Kota. The brief facts as emerging from the impugned order are that the respondent was the registered contractor, who was awarded several works contracts during the assessment years 1987-88 and 1988-89. Out of the said contracts, some were for deployment of labour and for doing the earth work, and some were for the construction of bungalows, BT Roads, etc. The assessing authority therefore assessed the respondent to tax in respect of the materials supplied by them for being used in the execution of the works contracts. This petition pertains to the assessment year 1987-88. It appears that against the ex parte assessment made in respect of the year 1987-88, the respondent had filed the application under section 10C of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the said Act") before the assessing authority, who after hearing the respondent, had set aside the ex parte assessment order, and passed the fresh assessment order on April 2, 1992, under which the assessing officer imposed tax and surcharge, amounting to Rs. 46,672 and interest amounting to Rs. 44,025 under section 11B(1)(f) of the said Act. Being aggrieved by the said order, the respondent had preferred an appeal before the

Deputy Commissioner (Appeals), Commercial Taxes, Kota, which appeal was dismissed by the said authority vide the order dated March 3, 1998. Being aggrieved by the said order, the respondent had preferred the second appeal before the Tax Board, which appeal was partly allowed by the Board vide the impugned order dated July 18, 2002, whereby the Board confirmed the order of Deputy Commissioner so far as liability to pay tax and surcharge was concerned, however set aside the order for payment of interest amount. The petitioner-Department being aggrieved by that part of the order passed by the Board, which related to the interest, has preferred the present revision petition.

2. The learned counsel Mr. R.B. Mathur, for the petitioner-Department placing heavy reliance on the provisions contained in section 11B(1)(f), submitted that the respondent was liable to pay interest on the tax accrued. In the instant case, according to him, by virtue of the notification issued by the State Government on June 28, 1989 which had retrospective effect from May 28, 1987, the respondent-assessee was liable to pay the interest on the amount of tax, when the liability to pay tax was quantified. He also submitted that the Board had misinterpreted the notification as well as the provisions contained under the said Act. Mr. Mathur has relied upon the decision of the apex court in case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , in support of his submissions.

3. At the outset, it is required to be stated that this revision petition has remained pending for want of prosecution since last eleven years, inasmuch as though it was filed in 2003, no sincere efforts appear to have been made by the petitioner-Department to prosecute further till this date. Hence, as such on that ground alone this petition does not deserve consideration.

4. So far as the merits of the case are concerned, it appears that the Board has allowed the appeal of the respondent-assessee partly on the ground that the interest could not be made chargeable in case of the retrospective levy of tax, as per the earlier judicial pronouncements of the Board referred to, and relied upon in the impugned order. The learned counsel for the petitioner-Department has failed to point out any judgment of this court or of the apex court laying down the legal position contrary to the decision of the Board. Though he has relied upon the decision of the apex court in case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , it may be noted that the said case did not deal with the issue as to whether the assessee would be liable to pay the interest under section 11B(1)(f) of the said Act, when the liability of the assessee to pay tax arises by virtue of the notification having retrospective effect. In that view of the matter, the court does not find any illegality or infirmity in the impugned order passed by the Board. The revision petition being devoid of merits, is dismissed.

