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(2002) 07 RAJ CK 0140

In the Rajasthan High Court

Case No : Sales Tax Revision No. 608 of 1999

C.T.O. APPELLANT

Vs

Indo Plast Industry Ltd. RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Citation : (2003) 4 RLW 2603 : (2003) 1 WLC 563

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : G.N. Gauri, for the Appellant; D. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—The petitioner Commercial Taxes Officer has preferred this revision petition against the order of the Rajasthan Tax Board dated 21.4.98 wherein it has been held that the product sold by the respondent-company which are Hose-collar, Hose-socket, Hose connector, Hose-clip, foot-valve are the items used in water pump and hence, the sales-tax which was leviable under these items would be 10% as it will have to be treated as a residuary item which prescribes 10% tax only. Thus, the order passed by the Assessing Authority and the Appellate Authority holding therein that it should be leviable under item No. 78 which specifies 12% tax for all types of sanitary goods and all types of pipes and pipe-fittings cannot be levied as the items manufactured by the respondent herein would fall in the residuary items. Consequently, the orders passed by the quasi judicial authorities were set aside by the Rajasthan Tax Board at Ajmer.

2. The petitioner-Department through the Commercial Taxes Officer Feeling aggrieved with the aforesaid order of the Tax Board preferred this revision petition and assailing the judgment and order of the Tax Board, it was submitted by learned counsel for the petitioner that Hose-collar, Hose-socket, Hose-connector, foot-valve are all the items which can be treated as the components used in sanitary fittings and hence, the assessing authority was justified in

levying 12% tax against the respondent and 10% was not enough.

3. In response to the aforesaid submission, the counsel for the respondent submitted that 12% tax levied by the assessing authority and upheld by the appellate authority was unjustified as the Government itself vide its Notification No. F.4(4)FD/Tax Division/99-126 dated 26.3.99 has specified separate entry No. 8(b) for water pump set accessories namely hose-nipple, foot valve and delta starters including its parts and the tax leviable under this item is 2% only which is much lower than what the respondent had collected and deposited which was 10%. Thus, that the learned counsel for the respondent-assessee is trying to emphasise is that if the Government itself though it proper to put these goods in a separate category which could not have been treated as sanitary fittings Hems as a consequence of which it though it proper to keep the sales tax rate much lower which is 2% only a reasonable inference ought to be drawn that earlier also these items could not have been treated as sanitary fittings and it ought to have been treated under the head of residuary item, this is all the more necessary because these items are not used in the sanitary Fittings, but they are used for lifting water in the water pumps which are normally used for irrigation purposes. It was further submitted that the Division Bench of this High Court in State of Rajasthan v. Oriental Agencies (1), had occasion to deal with the question as to whether "all types of pipes and pipe fittings" could be treated as sanitary fittings and after thorough discussion it was held that this definition could not include all kinds of pipes and pipe fittings as sanitary pipes which were not used in sanitary fittings meaning thereby that if particular pipe and pipe fittings which were normally used for other purposes not including sanitary goods and fittings, the same could not be enlarged to the extent of including all pipes and pipe fittings in the category of sanitary fittings and will have to be treated as residuary item. While this judgment reinforces the submission of the counsel for the respondent-assessee, the more weighty argument which goes in favour of the respondent is that the Government itself vide the notification noted hereinabove has categorised the pump set accessories which include hose-collar, hose-socket, hose- connector, hose-clip, hose-clip, hose-nipple, foot value and delta starters including its parts in a separate entry laying down only 2% tax whereas the assessee has paid 10% as per the earlier position which finds support from the judgment and order referred to hereinbefore.

4. It is, therefore, reasonable, just and logical to infer that the items "all pipes and pipe fittings" could not have been included by the assessing authority as sanitary fittings so as to realise higher sales tax from the respondent as it ought to have been treated as a ''residuary item'' at the time when the assessment was made. For all these reasons, the submissions advanced by the respondents'' advocate in support of the respondent-assessee''s case makes sense and hence they are accepted.

5. Consequently, this revision petition is not fit to be entertained and hence it stands dismissed.

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