(2015) 09 RAJ CK 0102

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 439/2005

C.T.O., Jodhpur APPELLANT

Vs

Chagni Ram Gehlot RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0102

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Vinit Kumar Mathur, Dinesh Godara and Falgun Buch, for the Appellant; Sushila Sharma on behalf of D.K. Sharma, for the Respondent

Judgement

Vineet Kothari, J.—The present revision petition has been filed by the Revenue aggrieved by the dated 14.03.2005 passed by the learned Single Member of the Tax Board in Appeal No. 77/2004/Jodhpur "Commercial Taxes Officer, Works Contract & Leasing Tax, Jodhpur v. M/s. Chagni Ram Gehlot, Jodhpur" dismissing the appeal of the Revenue filed against the order dated 16.07.2003 passed by the Deputy Commissioner (Appeals), Jodhpur, who allowed the appeal of the Assessee preferred against the order dated 26.03.2003 passed by the Assessing Authority.

2. The learned Tax Board in its impugned order dated 14.03.2005, while upholding the order of the Deputy Commissioner (Appeals), Jodhpur dated 16.07.2003, held as under:--

"We are, therefore, of the view that the prohibition contained in Condition No. 4 of not using the declaration form to purchase goods involved in the execution of a works contract, is only applicable to purchases to be made within the State under various provisions of the RST Act. In this view of the matter, the correct interpretation the words "declaration forms" used in Condition No. 4 of the aforesaid Notification would be "declaration forms under the RST Act." It is thus very clear that the learned AA committed error in levying additional tax along with interest on the value of goods purchased by the respondents against Form ''C'' under the provisions of the CST Act, as by doing so, no violation of Condition No. 4 of the Notification aforesaid was caused by the respondents under the law."

3. The learned counsel Mr. Vinit Kumar Mathur appearing for the Revenue fairly submitted that the controversy involved in the present revision petition has been decided by the co-ordinate Bench of this Court at Jaipur in the case of Commercial Taxes Officer, Works Contract & Leasing Tax, Commercial Taxes, Ajmer v. M/s. Jatan Construction Pvt. Ltd., Kar Bhawan Ka Pass, Todarmal Marg, Ajmer [S.B. Salex Tax Revision Petition No. 67/2006, decided on 22.08.2013].

4. The relevant observations of the learned Single Judge in the aforesaid case is quoted herein below for ready reference:--

"8. I have considered the arguments advanced by counsel for the parties and perused the impugned orders as also the notification. In my view, it would be fruitful to reproduce the notification dt. 28/04/1993, bearing No. 898, which provides as under:--

"F. 4(7) FDBR. IV/92-14 dated 28.4.1993, pub. 30.4.1993

S.O. 29.--In exercise of the powers conferred by S. 4(2), RST Act, 1954, read with rule 10B, RST Rules, 1955 and in supersession of this department notfn. No. F. 4(7)/FDGr. IV/92/79 dated 4.3.1992 [S. No. 872], the State Govt. hereby exempted from tax the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts relating to buildings, bridges, dams, roads and canals on the following conditions, namely:--

1. That the contractor undertakes to pay exemption fee @ 1% on the total value of such contract;

2. That the contractor holds a valid certificate of exemption for such contract;

3. That such contract is awarded (date of despatch of acceptance of the contract) after the date of publication of this notfn in the Official Gazette;

4. That the contractor shall not be entitled to use declaration forms to purchase goods without paying tax or paying tax at concessional rate of tax, for being used in the execution of such contract; and

5. That if the contractor uses declaration forms in purchasing any goods in violation of Condition No. 4, apart from paying exemption fee under this notfn, he shall be liable to pay tax on the said purchases at the rate notified under S. 5, with interest, subject, however, if he has paid any tax at the rate of such purchases, tax so paid shall be allowed as set off again the tax payable by him under this condition."

9. Section 4(2) of the RST Act, 1954 is also quoted hereunder:--

"4. Act not to apply to certain sales.--

(1) ....

(2) Where the State Government is of opinion that it is necessary or expedient in the public interest so to do, the State Government may, by notification in the Official Gazette, [exempt, whether prospectively or retrospectively], from tax the [sale or purchase] of any goods or class of goods or any person or class of persons on such conditions and on payment of such fee as may be specified in the notification."

10. On perusal of the above notification, read with Section 4(2), quoted herein above, in my view, it clearly brings out from record that it has been issued in exercise of powers conferred by Section 4(2) of the RST Act. Therefore, when it has been issued under the RST Act, then, in my view, it cannot be expressed to be intended for having been issued under the Central Sales Tax Act (for short, ''CST Act''). It is also clear on perusal of the notification that it was meant for a contractor and when the contractor has satisfied all the conditions laid down in the said notification, then benefits arising out of the said notification have to be conferred on such a dealer (In the present case, the respondent-contractor). In the present case, to avail the benefit, not only the respondent-assessee furnished declaration form ''C'' but also furnished declaration form ST-18-A which has not been doubted by the assessing officer and have been found to be in order. It is true that the condition No. 4 prohibits those contractors who wished to avail the benefits of tax exemption under the notification dt. 28/04/1993 to use declaration forms for purchasing goods without paying tax or paying tax at the concessional rate but such a prohibition imposed under the RST Act cannot be allowed to be extended to the purchases of the goods in the course of Inter-State trade or commerce under the provisions of the CST Act. In my view, the provision contained in condition No. 4 of not using the declaration forms to purchase goods involved in the execution of the works contract is only applicable to purchases to be made within the State under the various provisions of the RST Act. In my view, the correct interpretation of the words "declaration forms" used in condition No. 4 of the said notification would certainly mean "declaration forms under the RST Act" for it has been issued under the RST Act. Accordingly, in my view, the petitioner-assessing officer erred in levying additional tax alongwith Interest on the value of the goods purchased by the respondent-assessee against declaration form ''C'' under the provisions of the CST Act as by doing so, no violation of condition No. 4 of the notification, aforesaid, was caused by the respondent-assessee under the RST Act, 1954. In my view, the Tax Board as well as DC (A) came to the correct conclusion and even otherwise, in view of the observations made herein above, the notification has to be held to be under the RST Act, 1954 only.

11. Accordingly, the question of law is answered in favour of the respondent-assessee and against the petitioner-assessing officer.

12. Consequently, instant sales tax revision petition has no force and the same is accordingly dismissed. No order as to costs.

Sd/- (J.K. RANKA), J."

5. The learned counsel Ms. Sushila Sharma on behalf of Mr. D.K. Sharma appearing for the respondent-Assessee supported the impugned orders and prayed for dismissal of the revision petition of the Revenue in terms of the aforesaid order dated 22.08.2013 passed by the co-ordinate Bench of this Court at Jaipur.

6. Having heard the learned counsels for the parties and upon perusal of the record of the case including the judgment of the co-ordinate Bench cited at bar, this Court is in respectful agreement with the view taken by the co-ordinate Bench of this Court at Jaipur. However, it may be added that though the word "Declaration Forms" employed in Condition No. 4 of the Notification dated 28.04.1993 does not restrict furnishing of declaration forms only issued under the provisions of the RST Act and, therefore, they could as well cover the declaration forms like ''C'' Forms issued under the CST Act, 1956, but there is no stipulation in the said Condition No. 4 that if the purchases made by the contractor without paying the tax or paying tax at the concessional rate of tax in the course of inter-State trade or commerce under CST Act, the difference of tax would be levied. Further the Condition No. 5, clarifies the situation beyond doubt, that if the contractor uses the declaration forms in violation of Condition No. 4 then, he shall be liable, apart from paying the exemption fees under this notification, to pay tax on the said purchases at the full rate notified under Section 5 of the RST Act with interest and the tax so paid shall be allowed as set off against the tax payable by him under this notification. The State Legislature has no power to impose additional tax in case of inter-State purchases made against ''C'' Form. Therefore, no such restriction could have been included in the Notification.

7. The Notification dated 28.04.1993 allows a general exemption to the contractors, who are engaged in the works contract, like construction of buildings, bridges, dams, roads and canals subject to the certain conditions, inter alia, on payment of exemption fees @ 1% of the total value of such contract subject to the fulfilment of other conditions including the condition Nos. 4 and 5, quoted above. Since, in the present case, the assessee is a contractor and carrying on the constructions works and he purchased the goods in the course of inter-State trade, the CST would be payable in the appropriate State, i.e. U.P. wherefrom the movement of the goods commenced and for this reason, the contractor was not liable to pay any tax under the provisions of the RST Act, 1994 and the State of Rajasthan could not ask the contractor to pay tax under the provisions RST Act on such interState purchases of the Contractor. Therefore, it could not be treated as violation of the condition No. 4 of the Notification dated 28.04.1993.

8. Thus, on a conjoint reading of both the conditions Nos. 4 and 5, it supports the view taken by the learned Single Judge of this Court at Jaipur Bench in the aforesaid case of CTO v. M/s. Jatan Construction Pvt. Ltd. (supra), though

reference to the condition No. 5 has not been specifically made in para 10 of the judgment, quoted above, but for this additional reason also, the same view appears to be in consonance with the harmonious reading of the conditions of the Notification and, therefore, this Court is in respectful agreement with the said view taken by the learned Single Judge of this Court at Jaipur Bench.

9. In view of the discussion aforesaid, this Court finds no force in the present revision petition filed on behalf of the Revenue and the same is liable to be dismissed in terms of the judgment dated 22.08.2013 passed in the case of CTO v. M/s. Jatan Construction Pvt. Ltd. (supra), while upholding the orders of the Deputy Commissioners (Appeals) and of the learned Tax Board.

10. Accordingly and in view of the above, the present revision petition filed by the Revenue is dismissed. No order as to costs. A copy of this order be sent to the learned Tax Board and to the parties concerned forthwith.