

(2011) 09 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 219 of 2004

C.T.O., Special Circle

APPELLANT

Vs

Jagdish Patel

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2012) 1 RLW 469

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Lokesh Mathur on behalf V.K. Mathur, for the Appellant; Vikas Balia, for the Respondent

Judgement

Vineet Kothari, J.—This revision petition has been filed by the petitioner-Revenue against the order of learned Tax Board dated 30.8.2002 dismissing Revenue's Appeal No. 192/2001/Pali (Asstt. Commissioner, Special Circle, Pali vs. M/s. Jagdish Patel, Pali). The question of law involved in the present case is as to whether a notarized photocopies of declaration Form ST-17 for availing the concessional rate by the selling dealer is furnished by the purchasing dealer is sufficient compliance with Rule 23 read with section 5(3) of the R.S.T. Act, and whether in the absence of original declaration Form ST-17, such a benefit could be extended to the assessee. The Assessing Authority in the original assessment order had disallowed this benefit while passing the impugned assessment order on 4.9.1998 for the assessment year 1.4.1996 to 31.3.1997 (1996-97).

2. The assessee applied for rectification of the said order u/s 37 of the Act, which also came to be rejected by the Assessing Authority on 22.2.1999 vide Annex. 2. The assessee thereafter approach the learned Deputy Commissioner (Appeals), which appeal came to be allowed by the Deputy Commissioner (Appeals) vide order dated 5.9.2000 relying upon a decision of Rajasthan High Court in the case of C.T.O. vs. M/s. Rajasthan Jan Jati Khahetriya Vikas Nigam, Udaipur reported in 1994 (2) STO 263 in which the learned Single Judge has held that photocopies of

the original cannot be said to be an evidence other than ST-17, however, the authorities should examine the genuineness of the photocopies and should give benefit of exemption/concession. Therefore, the order of the lower authorities setting aside the such taxes and interest imposed against the assessee was not interfered by this Court.

3. Learned counsel for the petitioner-Revenue, Mr. Lokesh Mathur submitted that the controversy involve in the present case is no longer re-integra in view of Hon'ble Supreme Court decision in the case of Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, in which the Apex Court relying upon its earlier judgments in the case of Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, , Delhi Automobiles (P) Ltd. Vs. Commissioner of Sales Tax, Delhi, and State of Madras Vs. R. Nand Lal and Co., in paras 14 and 15 has held as under:

14. We are of the view that Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provides for furnishing of the original C Form in order to claim the concessional rate of tax is consistent with the provisions of the Central Sales Tax and there is no conflict between the provisions of Rules 12(2) and (3) of the Central Sales Tax Rules and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 as contended by the appellant. Rule 12 of the Rules is intended to prevent misuse of C Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond. In other words, in order to claim concessional rate of tax, the original C Form has to be attached to the return as provided under Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. It is not a mere formality or technicality but it is intended to achieve the object of preventing the forms being misused for the commission of fraud and collusion with a view to evade payment of taxes. In our opinion, Rule 6(b)(ii) which is clear and categoric cannot be liberally construed but it should be construed strictly. We, therefore, hold that without producing the original of the C Forms as prescribed under Rule 6(b)(ii) of the Rules, the appellant is not entitled to concessional rate of tax under sub-section (4) of Section 8 of the Act.

15. The very purpose of prescribing the filing of C Forms is that there should not be suppression of any interstate sales by a selling-dealer and evasion of tax to the State form where the actual sales are effected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C Form to the selling dealer. Since the dealer should issue C Form, he has to maintain a detailed account of such C Forms obtained from the department prescribed under the State's taxation law. The C Form is a declaration to be issued only by the Sales Tax Authorities of the States concerned. By issuing declaration in C Form in purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the State concerned of the purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where the selling dealer is situated.

4. Learned counsel for the Revenue, therefore, urged that the Deputy Commissioner (Appeals) as well as learned Tax Board have fallen into error in allowing the benefit to the assessee on the basis of notarized photocopy of Declaration form ST-17, and the learned Tax Board has erred in rejecting the Revenue's appeal, preferred against the order of Dy. Commissioner (Appeals) vide order impugned dated 30.8.2008, and therefore, the present revision petition filed by the Revenue deserves to be allowed.

5. On the other hand, Mr. Vikas Balia, learned counsel for the assessee strongly relied upon the decision of this Court in the case of M/s. Rajasthan Jan Jati Khahetriya Vikas Nigam (supra) and submitted that said judgment hold the field until the aforesaid Supreme Court in the case of India Agencies" case decision relied upon by the learned counsel for the Revenue, which as delivered on 16.12.2004; and relying upon said judgment of Rajasthan High Court only, the authorities below have allowed benefit of exemption/concession on the basis of the said notarized declaration in Form ST-17 in favour of assessee-selling dealer. He submitted that therefore the procedural law contained in Rule 23 of R.S.T. Rules in this regard cannot be retrospectively undone so as to deprive the assessee of the benefit already given to him on the basis of such notarized declaration Form ST-17. He, however, frankly submitted that after 2005 in view of aforesaid Supreme Court decision, this situation would be otherwise and no photocopies or notarized declaration could be accepted after the said date.

6. Having heard learned counsels for the parties, this Court of the considered opinion that the present revision petition filed by the Revenue deserves to be allowed. The reasons are as follows.

7. The law declared by the Hon"ble Supreme Court in the case of India Agencies (supra), is not the first judgment on this issue. The leading judgment is in the case of Kedarnath Judge Mfg. Co. (supra), delivered way-back in the year 1965, which has been relied upon by the Apex Court again while delivering the judgment in the case of India Agencies (supra). The law declared by the Apex Court that the concession/exemption from the tax can be given only on the basis of original declaration Form is law binding on all the courts and authorities below including this Court.

8. The decision of the Coordinate Bench of this Court in the case of M/s. Rajasthan Jan Jati Khahetriya Vikas Nigam, Udaipur (supra) cannot be said to be good law in view of Apex Court decision in the case of India Agencies (supra). The said decision of learned Single Judge of this Court does not refer to any of these judgments of Apex Court, it is not the question of divesting the assessee of his vested rights which he got with the compliance with the procedural law by the impugned assessment order, but it is on the other hand, mandatory compliance of the relevant rules and furnishing of original declaration form, which alone could have entitled the respondent-assessee, the selling dealer to avail such concession/exemption from tax, if such original declaration form as furnished by the purchasing dealer in turn is filed before his own assessing authority.

9. In view of the undisputed legal position as laid down by the Apex Court, which is the law declared under Article 141 of the Constitution of India and would apply for the period prior to the date of judgment, and also equally for Declaration Form ST-17 under R.S.T. Act as for C Form under C.S.T. Act, this court is of the firm opinion that the appellate authorities below have fallen into error in holding against the Revenue and relying upon the decision of this Court in the case of M/s. Rajasthan Jan Jati Khahetriya Vikas Nigam, Udaipur (supra) and in holding that notarized photocopy of declaration form in ST-17 was sufficient compliance with Rule 23 and concession/exemption could be given to the selling dealer-assessee on the strength of such declaration form. Accordingly, this Court is of the opinion that the present revision petition filed by the petitioner-Revenue deserves to be allowed and the same is hereby allowed. The impugned order of learned Dy. Commissioner (Appeals) dated 5.9.2000 and Tax Board's order dated 30.8.2002 are set aside and the assessment order passed by the Assessing Authority dated 4.9.1998 and rejection of rectification application vide order dated 22.2.1999 are upheld. No costs.