
(2011) 11 RAJ CK 0027

In the Rajasthan High Court

Case No : Sales Tax Revision No. 618 of 2005

Grasim Industries Ltd.

APPELLANT

Vs

CTO

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (2013) 58 VST 314

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Ramit Mehta, for the Appellant; Siddharth Tatia on behalf of V.K. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The petitioner has filed the present revision petition against the order of the Tax Board dated August 26, 2005, disposing of the Revenue's appeal against the order of the Deputy Commissioner (Appeals) dated November 5, 2004 and previous order dated June 20, 2003. The controversy in nutshell in the present case is as to whether the petitioner-assessee during the relevant assessment year commencing from January 1, 1985 was entitled to the benefit of partial exemption or not in terms of notification dated May 6, 1986, issued u/s 8(5) of the Central Sales Tax Act, 1956. The said partial exemption was to be given by comparing the increase of tax liability with average percentage in respect of other manufacturers in the State in "relevant industry" during the year 1984-85.

2. The stand of the assessee was that these terms "relevant industry" in the notification dated May 6, 1986 could refer only to other cement industries in the State of Rajasthan manufacturing white cement which the petitioner also was manufacturing and it could not be compared with the manufacturers of other portland cement and gray cement, whereas the stand of the Revenue was otherwise and the Revenue was contending that such "relevant industries" would

include such other cement manufacturers also.

3. The controversy of interpretation of these terms "relevant industry" in the notification dated May 6, 1986 was put to rest after the impugned order of the Tax Board in the present revision petition dated August 26, 2005 by the Division Bench decision of this court in the case of Commissioner of Commercial Taxes v. Grasim Industries Special Appeal Writ No. 482 of 2001 decided on July 22, 2009 in the case of present assessee itself, the said Division Bench judgment was also affirmed by the apex court by dismissal of SLP on February 19, 2010, namely SLP No. 21792/2009-Commissioner, Commercial Taxes v. Grasim Industries. The relevant extract of the Division Bench decision of this court is reproduced below for ready reference (pages 322 and 323 infra):

In our view, the "relevant industry", therefore, has to be construed to mean, as would be understood and generally treated by the people in the trade and commerce, conversant with the subject, and comes to be known in the common parlance. The honourable Supreme Court in *Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others*, , relied upon by learned Single Judge, has clearly held in interpreting the meaning of word in a taxing statute the acceptance of a particular word by the trade and its popular meaning should commend itself to be authority... If considered on this principle, for the writ petitioner-assessee, relevant industry would be "the industry manufacturing the goods that are being manufactured by the assessee". In our view, the mere omission of the word "of goods" in clause (2) of annexure 1, which words have been considered by learned single judge has no adverse effect on the aspect, as to from which industry the relevant inputs are to be obtained for the accounting year 1984-85, for the purpose of computing the extent of eligibility of the assessee to claim partial exemption of tax under the notification.

We may also, consider here, that it is by chance that in the relevant accounting year 1984-85 there was one unit, being manufacturer of white cement in 1984-85 in the State and therefore, the controversy has arisen, rather raised by the petitioner for claiming partial exemption on the basis of the input figures of that industry, but if that industry also would not have been there, the question is, as to whether the assessee would, claim partial exemption on the basis of the input figures of other cement industry, which might have existed in the accounting year 1984-85, and in our view, the answer to this also has to be in the negative, inasmuch, as, in that event, the assessee would not have been entitled to claim partial exemption under this notification, for want of existence of other manufacturer in the State, in the "relevant industry" during the, accounting year 1984-85.

Then so far as the aspect of white cement manufactured by the assessee to be comparable with other varieties of cement is concerned, that has already been considered by the learned single judge threadbare and what we find is that, that comparison and distinction has been made, only for the purpose of finding, as to whether the other manufacturers of other species of cement can be said to fall

within the expression of other, manufacturer in the relevant industry and the aspect has been considered on the basis of the judgment of the honourable Supreme Court, also approving the Judgment of Calcutta High Court. At page 11, the learned single judge has also taken this view, that the other manufacturer in the State in the relevant industry appears, to be a common parlance tax criteria, with which the commodity is known in the trade, and has noticed the common parlance, distinction between portland gray cement, and the white cement in general.

In our view, thus, the impugned judgment does not suffer from any error, requiring interference by us in appeal.

The appeal thus, has no force, and is dismissed.

Sd/-

(Govind Mathur) J.

Sd/-

(N.P. Gupta) J.

4. By the impugned order, the learned Tax Board dated August 26, 2005 also, the matter was restored back to the assessing authority for deciding afresh the case of the petitioner for aforesaid assessment year and the matter is said to be pending before the assessing authority.

5. The question of law in the present revision petition raised by the assessee is to the extent as to whether deeming acceptance" of rectification application u/s 37(3) of the RST Act 1994 by the Deputy Commissioner (Appeals) was justified or not which according to the assessee was justified, but according to the Revenue was not.

6. Be that as it, may, it is not necessary for this court to go into that question of law in view of subsequent development taking place in the matter and it goes without saying that the Division Bench judgment of this court in writ jurisdiction decided in favour of the assessee would cover the field for the assessee for the present assessment year also as all the authorities below this court in judicial hierarchy are bound by the aforesaid judgment of this" court which has even been affirmed by the honourable Supreme court.

7. Accordingly, this revision petition is allowed and the petitioner-assessee is held entitled to the benefit of the said notification dated May 6, 1986. The computation of partial exemption has to be made by the assessing authority by referring to the average percentage of relevant industries manufacturing white cement and the learned assessing authority cannot include the other portland/ gray cement manufacturers for the purpose of granting benefit of said notification dated May 6, 1986. Therefore, the assessing authority is directed to compute such partial exemption in terms of decision of Division Bench of this court.

8. In view of aforesaid, this court need not go into the question at all as to whether deeming acceptance of rectification" application u/s 37(3) of the Act for giving" such benefit was right or wrong on the part of the Deputy Commissioner (Appeal), the learned counsel for the petitioner also urged that on account of aforesaid partial exemption, certain refund would become due to the petitioner. It is needless to say that upon computation of partial exemption in terms of Division Bench decision of this court, if any refund becomes due to the petitioner, the same will have to be made by the Revenue in accordance with law and the said exercise should be completed within a period of three months from today. With the aforesaid observations, this revision petition is allowed. No order as to costs.