(2014) 06 TP CK 0029

In the Tripura High Court

Case No : WP(C) 323 of 2006

Haripada Debnath VsThe State of Tripura

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2014) 06 TP CK 0029

Hon'ble Judges : Deepak Gupta, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : H.K. Bhattacharji and Mr. S. Saha, Advocate for the Appellant; S. Chakraborty, Addl. G.A, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.—This writ petition is directed against the order dated 05-05-2006 passed by the Commissioner of Taxes, Government of Tripura whereby he dismissed the revision petition filed by the petitioner and upheld the re-assessment order passed by the Assessing Authority on 15-03-2006.

2. The undisputed facts are that the petitioner is a dealer in rubber and purchases rubber from the growers. The petitioner being a dealer registered under the Purchase Tax Act was bound to pay purchase tax on the rubber purchased by him. It is not disputed that the petitioner paid the purchase tax, but the Assessing Authority did not accept the returns of the petitioner for the assessment years 2000-01 to 2003-04 and held that compared to one M/s. Mani Malayer Rubber (P) Ltd., the rate of purchase shown by the petitioner was very low. This order was passed by the Assessing Officer on 12-12-2005.

3. The petitioner filed an appeal against the said order and the learned Assistant Commissioner of Taxes vide order dated 24-02-2006 set aside the assessment order and passed the following order:-

On scrutiny of the order of assessment, relevant case records and submission of the Ld. Advocate it appears that the Assessing Authority has rejected the purchase rates of raw rubber sheet and raw rubber scrap shown by the assessee and determined a much higher rate considering the rate of purchase by one dealer M/s. Manimalayer Rubber (P) Ltd. If the Assessing Authority is not inclined to accept the rate of a dealer, then he must compare the purchase rates of a few dealers not only of one dealer. In this case the Assessing Authority has considered the rate of only M/s. Manimalayer Rubber (P) Ltd. without considering the rate of purchase by other dealers in the same line of business during the relevant assessment years i.e. 2000-01 to 2003-04. In this respect I find merit in the submission of Shri Haripada Debnath, Proprietor of the business.

In view of the foregoing discussion I set aside the assessment order of the dealer for the assessment years 2000-01 to 2003-04 and direct the Assessing Authority to collect the rate of purchase of raw rubber sheet and raw rubber scrap of 3(three) to 4(four) dealers of Agartala during the relevant assessment years i.e. 2000-01 to 2003-04 and thereafter make an average of their rates in these 2(two) items. After doing so, the Assessing Authority should compare the said average rate of raw rubber sheet and raw rubber scrap with that shown by the dealer M/s. Haripada Debnath and accept the higher rate.

With the aforesaid observations and directions the assessment cases for the assessment years 2000-01 to 2003-04 are remanded to the Assessing Authority for re-assessment.

4. Therefore, the Appellate Authority while accepting the appeal of the petitioner further directed that with regard to the assessment years 2000-01 to 2003-04 the Assessing Officer should collect the rate of purchase of raw rubber sheet and raw rubber scrap of 3(three) to 4(four) dealers for the relevant period and after taking an average of the same should fix the purchase price. In re-assessment proceedings after this order was passed, the Assessing Officer considered the rates of the petitioner and of one M/S. Mani Malayer Rubber (P) Ltd., M/S. Bhaskar Rubbers, M/S. S.K. Enterprise and M/S. J.B. Rubber Udyog and thereafter, took the average price and accordingly, made assessment.

5. The petitioner again filed a revision which was dismissed on 05-05-2006. The main ground taken was that random sampling meant that at least 100 items should have been considered and not three or four dealers. It was also alleged that the price of rubber sheet and scrap depends purely on bargaining between the purchaser and the grower and, therefore, average rate should not have been accepted.

6. These arguments have been repeated before us. We are unable to accept such argument because the first order of the Appellate Authority has attained finality between the parties. It was the appeal of the dealer which was accepted and while allowing the appeal the Appellate Authority gave certain directions. If the petitioner was aggrieved by the said directions, he should have challenged the same in further proceedings. He accepted the findings of the Appellate Authority and thereafter acquiesced to the jurisdiction of the Assessing Officer in re-assessment proceedings. Having done so, he cannot now turn around and say that the method which was laid down by the Appellate Authority is improper.

7. Therefore, we find no merit in the writ petition which is accordingly dismissed.

