(2009) 04 RAJ CK 0068

In the Rajasthan High Court

Hindustan Coca Cola Beverages Pvt. Ltd. and Another APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 15
Rajasthan Value Added Tax Act, 2003 — Section 8(3)

Citation : (2009) 04 RAJ CK 0068

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Clarity and consistency is the hallmark of great laws. Ambiguity and uncertainty undermine the Rule of Law. This is more relevant in fiscal laws, which are generally worded in convoluted language. This case is a paradigm example of lack of clarity between the State and the assessee. The silence between the State, which has the power to tax, and the Assessee, who has a duty to pay the tax, has led to fiscal and legal chaos. The ambiguous silence on the part of the State, has forced the petitioner, the assessee, to run from pillar to post hoping for transparency and unequivocal answers.

2. The petitioners have challenged the notice dated 28-7-06 (Annexure-15) passed by the Commercial Tax Officer (`The CTO'' for short), two notices dated 18-8-06 (Annexure-21 and 22) passed by the CTO, two notices dated 12-9-06 (Annexure-28 and 29) also issued by the CTO, notice dated 16-9-06 (Annexure-30), the two assessment orders dated 12-9-06 (Annexure-26 and 27) and two orders dated 9-10-06 (annexure-32 and 33).

3. The brief facts of the case are that in order to encourage industrialisation of Rajasthan, the State Government in exercise of its powers u/s 15 of Rajasthan Sales Tax Act,1994 and subsection 5 of Section 8 of Central Sales Tax Act,1956, issued a notification notifying an Exemption Scheme in the year 1998 (`the Exemption Scheme'', for short). The aims of the Exemption Scheme were three fold: firstly, to generate employment for the people; secondly, to ensure

industrialisation and modernisation of the State; thirdly, to generate revenue for the Government so that the Government could carry out its functions. The petitioner No. 1 was granted exemption benefit for a new unit, which was proposed to be established in the backward area of village Kaladera, Tehsil Chomu, District Jaipur. The said Exemption Scheme was framed under the Rajasthan Sales Tax Act,1994. Initially the exemption was for a sum of Rs. 3,603 lacs, which was further enhanced to Rs. 3916.98 lacs, or for a period of 11 years with effect from 13-3-2000, whichever was earlier.

4. In 2003, Rajasthan shifted from the Sales Tax system to the newly introduced Value Added Tax (`VAT'' for short) system. Although the Rajasthan Value Add Tax Act, 2003 (henceforth `VAT Act''), received ascent of the Governor on 30-3-2003, but the necessary notification to bring the Act into force was not issued till 2006. Prior to coming into force, the VAT Act was much amended. Eventually, Rajasthan VAT Act, 2003, as amended by the Rajasthan Finances Act, 2006, came into force on 1-4-2006.

5. Immediately, coming into force, the VAT Act created certain legal confusion. The issue that arose was whether the Exemption Scheme which had commenced under the Sales Tax Act, 1994, would be continued under the VAT Act or not? Therefore, the petitioner No. 1, vide letter dated 12-3-2006, requested both the Hon''ble Chief Minister and the Finance Minister to extend the exemption incentives under the Exemption Scheme, for the full term of 11 years even after introduction of VAT Act. It further requested that the method, which the State would adopt, for allowing the exemption incentives to continue should also be spelt out. Because of the efforts made by petitioner No. 1, and because of the demands raised by other business concerns for the extention of Exemption Scheme, eventually, vide notification dated 29-4-2006, invoking its powers u/s 8(3) of the VAT Act, the state continued the Exemption Scheme for the unexpired period of eligibility and the balance cumulative quantum of tax as on 1-4-2006. The notification also specified that it is deemed to have come into force on 1-4-2006 itself.

6. Immediately on 8-5-2006, the petitioner wrote a letter to the Commissioner, Commercial Taxes Department, respondent No. 2, to clearly state the method, which the Government intended to adopt for continuation of Exemption Scheme. Such a clarification was essential so as to enable the petitioner to make suitable correction in its billing pattern. Such a clarification was also imperative so as to ensure that no uncertainty exists, at a later date, about the tax to be paid by the distributors and retailers. Most importantly, such a clarification was necessary to ensure that Government does not lose its revenue and that no legal issue would arise between the petitioner and the Government, or between the petitioner and its retailers and the revenue department. However, the said letter did not elicit any response from the respondent No. 2. Thus began a long series of correspondence from the side of petitioner seeking the clarification from the Commissioner. Vide letter dated 1-7-2006, vide letter dated 18-7-2006, vide

letter dated 25-7-2006, the same clarification was sought. But, the Commissioner maintained a studied silence over the entire issue.

7. Vide letter dated 25-7-2006, the petitioner wrote to the Finance Secretary of the State, respondent No. 1, requesting him to intervene and requesting him to direct the Commissioner to issue the necessary clarification. Consequently, vide letter dated 26-7-2006, the Finance Secretary wrote to the Commissioner, respondent No. 2, directing him to clarify the issue raised by the petitioner. However, even this letter did not elicit any response from the Commissioner. Since the method for implementing the Exemption Scheme under the VAT Act was absolutely unclear, vide letter dated 26-7-2006, the petitioner No. 1 informed the CTO, respondent No. 3, about the confusion that was persisting, and prayed for clarification. But, instead of clearing the doubts raised by the petitioner, instead of answering the issues, raised by the petitioner No. 1, on 28-7-2006, the CTO issued a notice to the petitioner u/s 9(2) read with 60(1)(b) and 60(2) of the VAT Act. On the same day, the petitioner again wrote to the Finance Secretary, seeking his intervention for ensuring that the exemption benefit granted under the VAT Act are not negated on account of notice issued by the CTO. Similarly on 29- 7-2006, the petitioner sought intervention of the Commissioner, pointing out the lack of clarity still prevalent about the method to be utilised for giving the benefit of exemption and pointing out the issuance of notice by the CTO. Again the petitioner requested that the method for carrying out the benefit of Exemption Scheme should be revealed. On 3-8-2006, the petitioner sent a letter to CTO requesting him to keep the notice in abeyance, as the issue about the method was yet to be resolved by the Revenue department. However, even these letters fell on deaf ears, as respondent Nos. 2 and 3 continued to maintain an eerie silence over the entire issue.

8. Left with not much of a choice, on 14-8-2006, the petitioner filed his written statement to the notice dated 28-7-2006. In the written statement, the petitioner clearly pointed out that the issue of clarification has yet to be resolved. It further pointed out that the VAT Act invoices, were issued by it in accordance with Rule 38 of Rajasthan Value Added Tax Rules, 2006. Therefore, there was no malafide intention on the part of the petitioner to evade the tax or to retain the tax illegally. Although the proceedings of notice dated 28-7- 2006 were discontinued, but on 18-8-2006 another notice was issued by the CTO u/s 25(1), 61(1), 55 and 65 of the VAT Act. The said notice covered the period from 1-4-2006 to 30-6-2006 and from 1-7-2006 to 15-7-2006. It was alleged in the notice that inspite of collecting VAT tax @ 12.5%, the petitioner was depositing only 6.25% as tax as has been shown in the invoice. But the petitioner was entitled to collect the tax only at the rate of 6.25%, and not at the rate of 12.5%. Since it was collecting the tax at the rate of 12.5%, but depositing the VAT tax @ 6.25%, this amounted to evasion of tax. Therefore, the notice was issued to petitioner No. 1 to show cause as to why action should not be taken for evasion of tax due and penalty should not be imposed and why the action should not be taken for the failure on the part of petitioner No. 1 to pay the amount due

within the time specified in the VAT Act.

9. Since the ambiguity about the method continued, the petitioner No. 1, vide letter dated 21-8-2006, again requested the Commissioner to intervene and similarly requested the CTO to keep the proceedings in abeyance. Since the CTO was continuing with the proceedings, since the petitioner faced the possibility of penalty being imposed upon them, on 29-8-2006, the petitioner wrote to the Finance Secretary seeking his urgent intervention. He pointed out that already they had received two notices showing the possibility of imposition of huge penalties, by the CTO, despite the fact that legal ambiguity existed with regard to method. However, the pleas of the petitioner to the Finance Secretary, the Commissioner and the CTO, did not elicit any reaction from any corner. Like a mammoth, the respondents did not respond to the prayers of the petitioner.

10. Therefore, on 29-8-2006 the petitioner No. 1 filed preliminary objections to the notice dated 18-8-2006. In its preliminary objections, it clearly pointed out that as the issue of method was unsettled, the department should wait till the issue is resolved. For, the issue goes to the root of the matter. Until and unless the method of exemption is worked out, the department is not in a position to finally decide whether the tax has been evaded by the petitioner or not. The petitioner also raised other grounds before the respondent No. 3. Vide two orders dated 12-9-2006 (Annexure-26 and 27) the respondent No. 3 dismissed the preliminary objections filed by petitioner No. 1. Having rejected petitioner''s preliminary objections, on 12-9-2006, the respondent No. 3 issued two notices again reiterating imposition of penalty for evasion of tax and for the failure of petitioner No. 1 to pay the amount due within the time specified. Moreover, a notice dated 19-6-2006 was issued to the petitioner No. 1 directing it to file his returns, failing which action would be taken in accordance with VAT Act.

11. Notwithstanding the nonsolving of the issue with regard to method, notwithstanding the request made by petitioner No. 1 to the respondents, vide order dated 9-10-2006 the CTO passed a final assessment order holding tax evasion of Rs. 1,02,66,558/-, and imposing a penalty of Rs. 2,05,33,116/-. The petitioner No. 1 has been directed to pay Rs. 4,15,32,398/- as the total amount to the Government.

12. Besides, challenging the notices and the assessment order, most importantly, the petitioner has come before this Court praying for a writ of mandamus to the respondents for a direction to them to resolve the issue of method for carrying out the Exemption Scheme. Hence, this petition before this Court.

13. Mr. J.M. Saxena, the learned Additional Advocate General, and Mr. R.B.Mathur, the learned Counsel for the Revenue, have raised a preliminary objection regarding maintainability of this petition. According to Mr. Saxena, the petitioner is challenging the notices and the assessment orders. However, for challenging the assessment orders, the petitioner has an alternative remedy under Sections 82 or 83 of the VAT Act, or it could file a revision petition u/s 84

of the VAT Act. Since alternative remedies do exist, the writ petition is not maintainable.

14. On the other hand, Mr. Jaideep Gupta, the learned Senior Advocate for the petitioner, has contended that the same preliminary objection was raised on behalf of the State when the case was listed for admission. After rejecting the preliminary objection, this Court had admitted the petition vide its order dated 13-12-2006. Therefore, the same issue cannot be re-agitated at this stage. Secondly, the petitioner is seeking a writ of mandamus--a writ which can be issued only by the High Court under Article 226 of the Constitution of India. Such a writ cannot be issued by the Appellate Authority under the VAT Act. Thirdly, the entire thrust of the writ petition is that respondents be directed to clarify the position of the State with regard to method to be adopted for carrying out the Exemption Scheme. Although the Exemption Scheme has been extended for the unexpired period, the method is yet to be divulged by the State. Fourthly, till the method is so revealed, the very basis of assessing the amount of tax to be paid, and the amount of tax evaded cannot be decided. Therefore, the issuance of notices is arbitrary; the very basis of assessment orders is ephemeral.

15. Heard learned Counsel for the parties on the preliminary objection. Since, preliminary objection was raised by the respondents when the case was taken up for admission, since after hearing both the parties, a coordinate bench has admitted the petition on 13-12- 06, the same preliminary objection cannot be re-agitated at this stage. After all, the order dated 13-12-06 was passed after due application of mind and after rejecting the preliminary objection raised by the State. Thus, the issue stands settled by the order dated 13-12- 06. Hence, this issue cannot be re-opened at this stage.

16. Furthermore, in the writ petition, the petitioner is not only challenging the notices and assessment orders, but most importantly is seeking a writ of mandamus. Obviously, the Appellate authority under the VAT Act does not have the power to issue a writ. Under the Constitution of India, the writ jurisdiction lies either with the High Court or with the Hon''ble Supreme Court. Therefore, it was but natural for the petitioner to approach the High Court for issuance of a writ. Moreover, since power to levy tax exists with the State, it is legally bound to explain the method for imposition and collection of tax. It is equally bound to unequivocally spell out the method for giving the benefit of Exemption Scheme to the beneficiaries of the scheme. In case, this legal duty is not performed by the State, then a person, like the petitioner, would be justified in approaching the High Court for issuance of writ of mandamus. As mentioned above, repeatedly the petitioner has been running from pillar to post praying and pleading that method be declared so as to pre-empt any legal complication. Since its request has failed to elicit any response from the respondents, the petitioner has no other option, but to knock at the doors of the High Court and pray for a writ of mandamus. Merely because certain notices and assessment orders have been challenged, it does not dilute the crux of the case, which is issuance of writ of

mandamus. The challenge to the notices and the assessment orders is incidental; the main relief being prayed for is the writ of mandamus. Therefore, the preliminary objection raised by the respondents are devoid of any merit. The same are, hereby, rejected.

17. Mr. Jaideep Gupta has raised following contentions before this Court: firstly, according to Exemption Scheme, the petitioner was granted exemption for eleven years or to the maximum amount of Rs. 3916.98 lacs. The incentive was to be in a cascading form of tax exemption: 100% for the 1st year, 90% for 2nd year, 80% for 3rd year, 70% for 4th year, 60% for 5th year, 50% for 6th year, 50% for 7th year, 40% for 8th year, 40% for 9th year, 30% for 10th year, and again 30% for the 11th year.

18. According to the notification dated 29-4-2006, whereby the Exemption Scheme was to be continued under the VAT Act, the benefit of said exemption would be limited to the unexpired period of eligibility and balance cumulative quantum of tax as on 1-4-2006. Thus, admittedly the benefit of the Exemption Scheme was extended under the VAT Act.

19. Secondly, according to the said notification the dealer was eligible "to charge and collect tax in excess of the percentage of exemption from tax liability granted to him". Thus the petitioner was entitled to charge and collect tax in excess of percentage of exemption from tax liability granted to him. According to Schedule V attached to the VAT Act any good, not covered under any other schedule under the VAT Act or under any other notification u/s 4 of the Act, such goods were taxable at the rate of 12.5%. Since at the relevant time, the petitioner was given 50% exemption, therefore, the petitioner was supposed to pay tax at the rate of 6.25%. However, according to notification dated 29-4-2006, the petitioner was entitled to charge and collect tax in excess of percentage of exemption from tax liability granted to him. Therefore, according to the said notification the petitioner was permitted to charge and collect the tax at the rate of 12.5% from the dealer or the distributors, but the petitioner was liable to pay tax only at the rate of 6.25% to the Government. Thus, he was entitled to retain the tax at the rate of 6.25% with itself. It is, in fact, refund of 6.25%, which would amount to 50% exemption in favour of the petitioner.

20. Thirdly, and most importantly, Rajasthan was not the only State, which shifted from Sales Tax to the VAT scheme of taxation. Other States like Karnataka, U.P. continued the benefit of exemption scheme granted under the Sales Tax Act to the VAT Act also. But, while other States annunciated the machinery and methodology for working out the exemption scheme, the State of Rajasthan maintained a complete silence over the issue. Karnataka came up with "the refund model" to facilitate exemption benefit to the units, which were eligible under the provisions of Karnataka VAT Act. According to this model, the entire levy of VAT is charged and collected by the assessee and deposited with the Government treasury. Thereafter, the assessee receives a "refund" of the amount to the extent of exemption. On the other hand, West Bangal has adopted

"the remission model". According to Section 118 (1) of West Bangal VAT Act read with 177 to 180 of West Bengal VAT Rules, the assessee is entitled to charge and collect entire VAT tax. He is eligible to submit before the Assessing Authority an account showing amount of tax, received by him towards exemption allowed by the State to the assessee. Then instead of depositing the entire tax amount in the government treasury, the assessee retains the exemption amount and deposits the remaining balance. According to learned Counsel, different models exist and have been announced by different state; but, no model whatsoever has been formulated by the State of Rajasthan. Thus, in order to avoid legal complications, it is imperative for the State to prescribe the method for the benefit of the assessee and the government itself. However, the respondents have failed to do so, thereby generating legal confusion.

21. Fourthly, since the very issue of method stands unresolved, it is improper for the respondents to issue one notice after the other to the petitioner. Such issuance of the notices is not only colourable exercise of power, but also amounts to abuse of power. It is a paradigm example of not only highhandedness, but also callous attitude towards the plight of the petitioner. Such action is arbitrary, unfair, unjust and unreasonable.

22. Lastly, obviously till the method is concretely defined, the Assessing Authority is not in a position to determine the evasion of tax, allegedly committed by the assessee. Therefore, the very basis of assessment order is inundated with fluid of misconception, drowned in assumption and presumption. Therefore, the impugned assessment order is not based on rational and legal logic. It suffers from non-application of mind and amounts to colourable exercise of power.

23. On the other hand, Mr. J.M. Saxena, learned Additional Advocate General, has vehemently argued that methodology for carrying out the exemption scheme is absolutely clear. According to Section 9(2) of the VAT Act no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him. Thus, if the petitioner was liable to pay only 6.25% tax, it could not have collected 12.5% as tax from the distributors and dealers. Since the petitioner has collected 12.5% from the distributors and dealers, it has violated the provisions of Section 9(2) of the VAT Act.

24. Secondly, the petitioner is not entitled to collect any tax. In fact, it is not entitled to retain any part of the tax with itself. Since, the petitioner has collected VAT at the rate of 12.5%, it was duty bound to deposit the tax at the rate of 12.5% with the Government. It could not have retained the tax at the rate of 6.25% with itself. Since it has retained the tax at the rate of 6.25% with itself, it has evaded the payment of tax.

25. Thirdly, since the method was abundantly clear, the respondents were justified in issuing notices to the petitioner.

26. Fourthly, the respondent No. 3 has given clear and cogent reasons for

concluding that the petitioner has not only evaded the payment of tax, but it has also violated the provisions of VAT Act. Therefore, the CTO is justified in imposing the penalty vide order dated 9-10-06.

27. Lastly, according to the learned Counsel the prayer for issuance of writ of mandamus and for seeking clarity from the State is merely a subterfuge to avoid payment of penalty and tax, evaded by it. Hence, learned Additional Advocate General, has supported the impugned notices and the assessment orders and has opposed the issuance of writ of mandamus.

28. Heard learned Counsel for the parties, perused impugned notices and the assessment orders and other material available on record.

29. This case raises a plethora of legal issues before this Court: firstly, whether the State is under a legal duty to declare the mechanism or the methodology for implementation of the Exemption Scheme continued under the VAT Act or not?

30. Secondly, if it is so, whether in its absence, can an assessment order be passed, when the very basis of assessment has not been defined by the Government?

31. Thirdly, whether passing of assessment order in a vacuum, when the very basis of assessment is unknown, amounts to arbitrary action or not?

32. Fourthly, whether notices issued by respondents No. 1 & 2 in such a situation amounts to colourable exercise or not?

33. Fifthly, whether liability of payment of tax and the penalty be imposed upon the assessee when the government itself is unsure about the methodology to be utilised for carrying out the Exemption Scheme?

34. Undoubtedly, it is the function of Legislature to enact the law; undoubtedly, it is the function of the Executive to implement the law. While the Legislature, in its wisdom enacts the provisions of law, the method governing the field, the methodology, the policy about the collection of tax or about the implementation of the exemption has to be done by the Executive. In fact, in order to substantially implement the legislation, the Executive is duty bound to proclaim the method for implementation of the Exemption Scheme for the benefit of public in general, and for the beneficiary, in particular. Of course, the Executive while declaring such a method or mechanism has to be given a free hand. It is not for the Judiciary to enter into the realm where it is for the experts to decide the financial implications affecting the state exchequer. A certain "play at the joints", a certain flexibility, necessarily, has to be given to the Executive by the Judiciary. However, when the Executive fails to perform its public duty, when the Executive maintains a studied silence over a burning issue, when the Executive creates a legal complication, because of its ambiguous silence, it is for the Judiciary to step in and to direct the Executive to fulfill its legal obligation. In such a scenario the Judiciary would be justified constitutionally for issuing appropriate writ, order or direction in the nature thereof to the Executive for doing the needful. The writ of

mandamus, one of the original five writs created in England, empowers the court to give appropriate directions to the Executive, when the Executive fails to carry out its public duty. This writ also forms part of the doctrine of checks and balance, enshrined in idea of separation of powers contained in the Constitution of India. Such a writ permits the Judiciary to keep a check on the Executive, be it an overzealous act of the Executive, or be its inefficiency, or lethargy of the Executive. Hence, this Court has ample power to direct the Executive to declare the method for implementing the Exemption Scheme.

35. The shifting from Sales Tax scheme to the VAT scheme opened up a Pandora''s box of legal issues. The issue was whether the exemption granted under the Sales Tax would continue under the VAT Act or not? Undoubtedly, the said issue has been settled vide notification dated 29-4-2006, whereby the State clearly declared that the Exemption Scheme shall continue under the VAT Act for the unexpired period of eligibility and is limited to the balance cumulative quantum of tax as on 1-4-2006.

36. However, the method for giving the benefit of the Exemption Scheme was never declared by the State. While other States like Karnataka, UP and West Bangal laid down their method, be it "the refund method", or "the remission method", the State of Rajasthan has yet to declare its method. Since, the method has not been spelt out either in the Act itself or through any notification, order or regulation, the confusion in the mind of beneficiaries, like the petitioner, continues to remain.

37. The notification dated 29-4-2006 has further complicated the situation. The notification clearly stated that "dealer shall be eligible to charge and collect the tax in excess of percentage of exemption from tax liability granted to him". The plain and grammatical meaning of this sentence seems to be: a) a dealer is entitled to charge and collect the tax, b) that the dealer may charge and collect tax "in excess of percentage of exemption from tax liability granted to him". Thus, he is not limited to collect the tax only to the extent of exemption, but can collect the tax beyond the percentage of exemption. If the plain and grammatical interpretation were to be applied, then in the instant case since 50% exemption has been given to the petitioner, it would be entitled to collect 6.25% of tax in excess to the exemption of 6.25% already granted to the petitioner, as he would be collecting "in excess of percentage of exemption". In this view of the matter, the petitioner was justified in collecting 12.5% and in depositing 6.25% with state exchequer, and in retaining 6.25% to itself. Such a collection and retention would be akin to the "the remission method" prevalent in the State of West Bangal.

38. However, the same sentence can be interpreted differently. The sentence could also mean that while the dealer is not to collect the tax to the limit of exemption, it is only to collect the excess part i.e. part remaining after the limit of exemption. Therefore, in the present case, since the petitioner was required to pay only 6.25% and since 6.25% was exempted, therefore, he is to collect

merely 6.25% from the dealer and the distributors. In such circumstances, he is not entitled to collect the remaining 6.25% from the dealers and distributors. Since the same sentence is prone to two different interpretations, the notification dated 29-4-2006 is not happily worded and has led to legal confusion. The confusion is further aggravated by the silence of the State. The State is yet to declare, whether "the remission model" or "the refund model" is applicable in the State of Rajasthan.

39. In the circumstances, mentioned above, it was foremost duty of the State to declare the method for carrying out the exemption scheme. In absence of such clear cut policy, the petitioner cannot be blamed for having collected 12.5% tax and for having deposited only 6.25% with the State.

40. Of course, Mr. Saxena has argued that Section 9(2) of VAT Act prohibits the registered dealer from collecting any amount by way of tax in excess of the amount of tax payable by him. But, until and unless the method is declared, the beneficiary is unaware of the mechanism for collecting the tax and for depositing the amount with the state. Moreover, the notification dated 29-4-2006 prima facie seems to have given the right to collect tax in excess of tax exemption from tax liability granted to the beneficiary. Even if, for the sake of argument, it is held that the notification dated 29-4-2006 is contrary to Section 9(2) of the VAT Act, even then the petitioner is bound by the notification, until and unless the said notification is quashed and set aside by a court of law. Therefore, in the instant case, the fault does not lie with the petitioner, but clearly lies with the State. While implementing the law, the Executive has to ensure both clarity and uniformity: a duty the State has failed to perform.

41. Since, the respondents did not declare the mechanism for implementation of the Exemption Scheme, obviously, legal ambiguity proliferated. On the one hand the beneficiaries, like the petitioner, were totally in the dark about the method for giving the benefit of the Exemption Scheme; on the other hand, the assessing authority, was left to interpret the VAT Act and the notification on basis of whims and caprices. In such an atmosphere of legal enigma, obviously, respondent No. 3 was not justified in issuing notice after notice to the petitioner. For, issuance of notice must also have a legal basis. After all, notices are not to be issued for the sake of harassing a law abiding person. The purpose of notice is to bring to the knowledge of a person that he/ it has omitted to do something required by law, or has done something in violation of the law. Thus, the purpose of notice is to point out the illegal action or omission done by the person. Furthermore, it is to warn the person that in case his acts are not mended, in case he does not fall in line, in accordance with law, then he will face certain legal actions against him, be they punitive or otherwise. All of this is possible only when the Acts and the Rules, the notification and regulations, the rights and the duties are clearly specified by the law, or by an executive policy. Where a legal ambiguity exists or where the silence on the part of State has led to confusion in the mind of people, in such circumstances the State should refrain from issuing notices to the people.

42. In the present case the petitioner had clearly pleaded before the Finance Secretary and the Commissioner to declare the method for implementation of Exemption Scheme. It had also pleaded before the Commissioner to intervene and to issue necessary directions to the CTO to stop issuing notices and to stop threatening the petitioner with penal consequences. However, unfortunately, all these pleas fell on deaf ears. It is, indeed, trite to state that government officers are legally bound to protect and promote interest of the people. The Executive is as much duty bound to protect the rights of the people as is the Judiciary. Hence, respondents No. 1 and 2 should have considered the plea of the petitioner and should have intervened. As far as respondent No. 3 is concerned, being a responsible officer, he should have realised that unlike the States of Karnataka, U.P. and West Bangal, Rajasthan has yet to declare its method. Therefore, he should have been sensitive to the plight of the assessee. But instead, like a salvo, he kept on firing one notice after the other. To say the least, such a bureaucratic apathy to the plight of the petitioner and bureaucratic highhandedness is legally questionable. Hence, the issuance of notices suffers from colourable exercise of power. These are, thus, legally unsustainable. They are, hereby, set aside.

43. Similarly, unless and until the method is declared, the assessment orders are passed in vacuum. In such a vacuum it is difficult to give a judicious finding whether the petitioner has evaded the tax or not. Since the finding that the petitioner has evaded the tax is based on shifting stand of interpretation of provision of law and of notification, the finding cannot be held to be legally valid. In the absence of a legal and valid finding about evasion of tax, a penalty cannot be imposed under the law. Therefore, the imposition of penalty is illegal. Surprisingly, if the petitioner was to collect VAT tax at the rate of 12.5%, and to deposit the same with the state, then the petitioner is deprived of the 50% exemption, to which he is entitled to under the Exemption Scheme. Therefore, the interpretation by the CTO is flawed. Hence, the assessment orders are meritless.

44. Since this writ petition succeeds on the ground of nondeclaration of the method by the state, since the state has failed to discharge its legal obligation, it is not necessary for this Court to examine the other contentions raised before this Court.

45. For the reasons, stated above, the writ petition is hereby allowed. The impugned notices dated 28-7-06 (Annexure-15) issued by Commercial Tax Officer, two notices dated 18-8-06 (Annexure-21 and 22) issued by CTO, two notices dated 12-9-06 (Annexure-28 and 29) issued by CTO, notice dated 16-9-06 (Annexure-30), the assessment orders dated 12-9-06 (Annexure-26 and 27) and orders dated 9-10-06 (annexure-32 and 33) are, hereby, quashed and set aside. The State of Rajasthan is directed to declare the method for implementation of Exemption Scheme within six months from the date of receipt of certified copy of this judgment. The respondents No. 2 and 3 shall be free to

initiate the assessment proceedings against the petitioner only after the method has been declared by the State of Rajasthan. The assessment order shall be in accordance with law and in accordance with the method so declared by the State. Till the process of assessment is completed, the petitioner should continue to deposit 12.5% tax. However, the amount so deposited shall eventually be subject to the policy decision of the State. There shall be no order as to costs.

