(2013) 04 RAJ CK 0099

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 752 of 1999

Hindustan Copper Limited APPELLANT

Vs

Commercial Taxes Officer RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15(1), 15(2)

Citation : (2013) 42 GST 188 : (2013) 63 VST 63

Hon'ble Judges : Jainendra Kumar Ranka, J

Bench : Single Bench

Advocate : Vivek Singhal, for the Appellant; P.K. Kasliwal, for the Respondent

Judgement

Jainendra Kumar Ranka, J.—Instant revision petition has been filed by the petitioner-assessee u/s 15(1)/(2) of the Rajasthan Sales Tax Act, 1954 against the order passed by the Rajasthan Sales Tax Tribunal, Ajmer, (in short "the Tribunal"), who vide order dated July 29, 1981 had modified the order for the assessment year 1976-77 passed by the Deputy Commissioner (Appeals), (in short the DC(A)). The revision petition was admitted on July 20, 1990 by this court on the following questions of law which are as under:--

(1) Whether the Sales Tax Tribunal was justified in holding that the rate of tax on the sale of copper wire bars and copper cathods would be charged and retained at four per cent when according to the accepted position of law the same were held to be falling within the category of rods and sheets, respectively?

(2) Whether the Commercial Taxes Department is entitled to retain the amount of tax which has been collected at a rate more than payable under law?

2. The learned counsel for the petitioner Mr. Vivek Singhal, at the very outset submitted that there has been no dispute so far as the facts of the present case are concerned, though, the sales tax was leviable at one per cent on copper wire rods and that was as per the notification issued by the Government of Rajasthan, bearing No. F-5(25)FD/CT/72-29 dated December 31,1975. He also submitted

that on account of inadvertence the petitioner had collected sales tax at four per cent when he was liable to collect the sales tax at one per cent only. The assessing officer, in the assessment order levied the tax accordingly at the rate of four per cent as the petitioner was charging the same at four per cent though as per the notification, it was only payable at the rate of one per cent only.

3. In the first appellate proceedings, the learned DC(A) accepted the contention of the petitioner and directed to apply the tax at one per cent. Both the parties, the petitioner and the respondent preferred appeals before the Tribunal on different grounds and it was pleaded before the Tribunal that it collected the sales tax at four per cent inadvertently and even deposited the entire tax collected in the Government Treasury though the applicable rate of charging tax was one per cent only. In so far as factum of refund of differential amount is concerned, counsel for the petitioner accepted and conceded before the Tribunal that the petitioner has not claimed any amount of refund of three per cent nor would it claim the differential amount of three per cent from the respondent-Department. However, on this premise, the appeal of the respondent-Department was accepted partly by the Rajasthan Sales Tax Tribunal.

4. The petitioner has challenged this finding of the Tribunal that the "petitioner will have no objection if the appeal is allowed". By this finding, when the appeal of the Revenue has been allowed therefore there is an apprehension from the phraseology used that the counsel appearing before the Tribunal admitted that tax at four per cent could be charged as was the case of the Department before the Tribunal, whereas concession was only to the extent of claiming of the refund of the differential amount only to the extent of three per cent only.

5. Counsel for the petitioner further submitted that as per the notification, issued by the Government, all throughout the tax at one per cent has been levied by the respondent and accordingly it is being paid at one per cent and question of any admission at four per cent does not arise. He further submitted that this court in the case of assessee-petitioner itself reported as Commercial Taxes Officer v. Hindustan Copper limited [1995] 96 STC 217 (Raj) after detailed finding and considering the aforesaid notification came to the conclusion that the tax at one per cent is only leviable in the case of the petitioner-assessee. He submitted that the aforesaid judgment of this court has attained finality.

6. The learned counsel for the respondent Mr. P.K. Kasliwal, on the contrary submitted that the counsel for the petitioner not only conceded the fact of refund but also rate of tax when there was concession before the Tribunal and on that concession appeal of respondent was allowed therefore the revision petition does not lie when there is a clear cut admission before the Tribunal, the challenge now for the levy of tax at four per cent to one per cent is totally unjustified. He further submitted that the petitioner had himself collected tax at four per cent therefore now cannot claim that rate was one per cent only. He further submitted that had there been any grievance to the petitioner he could have approached the Tribunal, again by moving a rectification application and thus submitted that

the instant revision petition has no force. He however, admitted that the co-ordinate Bench of this court, in the case of assessee itself, has already decided this very issue, but he is not in position to say as to whether the aforesaid judgment of this court was further carried before the honourable apex court or not. He also could not controvert the notification by which tax of only one per cent was leviable.

7. I have considered the arguments advanced before me by the learned counsel for the parties and have also perused the material on record as well as the impugned order. It appears to me that the controversy involved in the matter is very short and has arisen only on the fact observed by the Tribunal that "if the appeal of the Department is accepted, there would be no grievance to the petitioner and on this point this appeal is accepted". It is noticed that the notification was already in force and on the basis of it, the petitioner was liable to pay the tax at one per cent only though inadvertently, the tax was collected at four per cent and the same in entirety was deposited in the Government Treasury. From the perusal of the order of the Tribunal, it is quite clear in so far as the refund of differential amount is concerned, that the learned counsel for the petitioner accepted and conceded that neither the petitioner made any claim of refund nor he'' would make any claim in furtherance thereof, the Tribunal mentioned about allowing of the appeal of the respondent-Department inadvertently, Accepting tax rate at four per cent could not have been the intention of the counsel for the petitioner before the Tribunal nor the intention of the Tribunal as all throughout the issue of charging rate of tax of four per cent was challenged, was allowed by the DC(A) and it was the respondent, who was in appeal before the Tribunal.

8. It is further apparent that this very issue is squarely covered by the judgment of this court in the case of Commercial Taxes Officer v. Hindustan Copper Limited [1995] 96 STC 217 (Raj), and in view of the aforesaid the petitioner charged tax at one per cent and was also paying the same at one per cent only, the respondent-authorities have also accepted this proposition. In so far as question No. 2, i.e., refund of excess tax paid is concerned, learned counsel for the petitioner very candidly submitted that the petitioner does not want to press the claim of refund of excess of differential amount as was "pleaded before the Tribunal.

9. In view of the aforesaid discussions question No. 1 is answered in favour of the petitioner and against the respondent and question No. 2 is returned unanswered. Accordingly, the revision petition is allowed. No costs.