
(2010) 03 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2792 of 2001

Jai Marbles Private Ltd.

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Rajasthan Sales Tax Act, 1954 — Section 4

Citation : (2010) 2 WLN 222

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Advocate : J.K. Singhi, for the Appellant; R.B. Mathur, for respondents No. 1 to 2, for the Respondent

Judgement

Prem Shanker Asopa, J.—By this writ petition, the petitioner has challenged Clause (5) of the Exempt on Notification of sales tax dated 6.12.1990 issued by the Finance (Gr.I) Department, Govt. of Rajasthan, Jaipur, u/s 4 of the Rajasthan Sales Tax Act, 1954 (in short "the Act of 1954"), which has been made effective from 1.4.1990 to 31.3.1995, inter alia on the ground that it is ultravires Article 14 of the Constitution of India and violative of the Industrial Policy and the Act of 1954.

2. Initially, this writ petition was filed on 7.2.1992 and it was registered as SBCWP No. 2897/1992. Then, it was transferred to the Rajasthan Taxation Tribunal from where it was again transferred to this Court and thereafter, it has been again registered as SBCWP No. 2792/2001.

3. Briefly stated, the facts of the case are that vide Invoice No. 05/90-91 dated 22.5.1990 (Anx.2), the petitioner purchased one Gangsaw machine from M/s. Oswal Industries, respondent No. 3, for installation in the marble factory for a sum of Rs. 13, 13, 520/- which included sales tax @ 4%, amounting to Rs. 50,520/-. Further, vide Invoice No. 09/90-91 dated 30.6.1990, the petitioner purchased a Gantry Crane from the respondent No. 3, for a sum of Rs.

4,37,840/- which included sales tax @ 4% i.e. Rs. 16,840/-. There is no dispute that the seller-dealer had charged sales tax from the petitioner-purchaser on the purchase of aforesaid two machines.

4. On coming to know about the notification dated 6.12.1990 for sales tax exemption on local mineral based industries, the petitioner gave a letter dated 26.3.1991 (Anx.5) to the respondent No. 3 i.e. the seller, for refund of the sales tax. The respondent No. 3 in reply to the said letter wrote to the petitioner on 29.3.1991 (vide Anx.6) that it will refund the tax amount if the sales tax authority will refund to them at the time of assessment. Thereafter, the petitioner gave a notice of demand for justice dated 3.9.1991 (Anx.7) on the apprehension that the exemption may not be allowed on account of Clause (5) of the exemption notification dated 6.12.1990, according to which the dealer claiming exemption has to prove to the satisfaction of the assessing authority that he has neither charged nor demanded any tax on sale of such goods. It is stated in the writ petition that the notification was issued on 6.12.1990 and although it has been made effective from 1.4.1990 but still the seller could not have been insisted for not to charge or demand any tax as the same would have been contrary to the Act of 1954, according to which the dealer is under an obligation to charge sales tax from the purchaser.

5. This Court on 10.7.1992, stayed the final assessment order of respondent No. 3.

6. Submission of counsel for the petitioner is that the exemption notification dated 6.12.1990 is ultra vires Article 14 of the Constitution of India and violative of the Industrial Policy as also the Act of 1954.

7. Submission of Mr. Mathur, counsel for the respondents is that not only Clause (5) but other conditions were also required to be satisfied. Counsel also submits that Clause (5) of the Notification dated 6.12.1990 is legal and valid.

8. I have gone through record of the case and further considered rival submission of counsel for the parties.

9. In my view, prior to the issuance of the notification dated 6.12.1990, the dealer was not expected not to charge or demand the sales tax on the sale of the goods and the compliance of the notification could only be insisted upon from 6.12.1990. The retrospective operation of Clause (5) of the Exemption Notification dated 6.12.1990 from 1.4.1990, to neither charge nor demand any tax, is contrary to the Act of 1954 and in case the sale of the machines was effected without charging or demanding any sales tax, then the dealer-seller was required to face penal consequences as per the Act of 1954. There is no infirmity in Clause (5) of the Exemption Notification dated 6.12.1990 to make it effective from 6.12.1990. Here, in the instant case, since the sale in question was completed on 9.6.1990 and 18.7.1990, when the complete amount along with tax was paid, in respect of the sale transaction dated 22.5.1990 and 30.6.1990, which is prior to 6.12.1990, therefore, the compliance of Clause (5) of the

Exemption Notification dated 6.12.1990 could not be insisted upon.

10. In view of the above, I direct the assessing authority to make assessment of the respondent No. 3 for the year 1990-91 without insisting upon compliance of Clause (5) of the Exemption Notification dated 6.12.1990 in respect of the aforesaid two transactions and to pass appropriate order for refund of the sales tax with interest as applicable at the relevant time. The entire exercise be completed within three months.

11. The writ petition is disposed of as indicated above.