(2011) 11 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Revision Petition No. 486 of 2011

Kamla Floor Mills APPELLANT

Vs

CTO RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Citation : (2013) 60 VST 49

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Avinash Acharya, for the Appellant; Lokesh Mathur on behalf of V.K. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned counsels for the parties. The petitioner-assessee has filed present revision petition being aggrieved by the order of the Tax Board dated July 29, 2009 whereby the Tax Board allowing the Revenue''s appeal set aside the order of the appellate authority dated March 22, 2007 and affirmed the impugned assessment order dated March 22, 2005 for assessment year 2002-03 (April 1, 2002 to March 31, 2003).

2. The question of law raised by the petitioner-assessee in the present revision petition is that the assessee purchased wheat (rejected/damaged) during the relevant period for animal feed purpose only, and not for human consumption as exempted from the sales tax from various dealers of Punjab; and therefore, they were not taxable within the State of Rajasthan, the cattle feed being exempted under the goods notified vide Notification (S. No. 1027:F.4(25) FDGr.IV/92-Pt.II-21 dated September 28, 1995, of which item No. 8 in the said exemption notification read "cattle feeds excluding gowar, cottonseed, oil cake and deoiled cake".

3. The learned counsel for the petitioner-assessee, Mr. Avinash Acharya, relying upon the decision of the honourable Supreme Court in the case of Commissioner

of Sales Tax Vs. Ram Chandra Asha Ram (Dead) through L. Rs., submitted that damaged wheat unfit for human consumption, processed and used as food for cattle, has been held to be cattle fodder exempted from the tax by the honourable Supreme Court in the aforesaid judgment. Therefore, the cattle feed purchased by the assessee in the form of damaged/rejected wheat from the dealers of Punjab, could not be taxed in his hands; and the learned Tax Board has erred in allowing the Revenue''s appeal by the impugned order dated July 29, 2009 and restoring the order of the assessing authority.

4. On the other hand, Mr. Lokesh Mathur, learned counsel for the respondent-Revenue submitted that since the assessee himself failed to produce any evidence before the assessing authority, therefore, drawing the adverse inference against the assessee, the learned assessing authority was justified in imposing the tax and interest upon the petitioner and the Tax Board was also justified in allowing the Revenue''s appeal.

5. Having heard learned counsel for the parties, this court is of the opinion that prima facie the goods in question, namely, damaged wheat purchased by the assessee from the registered dealers of Punjab vide sale bills, illustratively produced before this court as annexure 1 with the revision petition, indicates that the goods in question have been purchased as cattle feed not fit for human consumption. There is no dispute that cattle feed is exempted from the payment of tax under the provisions of RST Act under the notification dated September 28, 1995, under the relevant entry No. 8. However, whether after, processing, such damaged wheat was sold as cattle feed or not, is a question of fact, which was/is required to be determined with the help of evidence produced before the assessing authority or an independent enquiry made by the assessing authority to establish that damaged wheat in question was not used or sold as cattle feed but otherwise. Admittedly, no such enquiry appears to have been made at the end of the assessing authority and the first appellate authority allowed the assessee''s appeal but the learned Tax Board allowed the Revenue''s appeal and restoring the imposition of tax instead of remanding the case back to the assessing authority. Such imposition of tax could not be made merely by drawing adverse inference against the petitioner-assessee.

6. Since the burden lies upon the Revenue to prove that taxable sale in the hands of the assessee has taken place during the relevant period, the assessing authority could not have imposed the tax without holding any independent enquiry at his own end merely on the basis that the assessee failed to produce relevant documents. He could not have either insisted upon the assessee himself to produce relevant documents or could conduct a survey at the business place of the assessee or even held independent enquiry by making enquiry with the purchasing dealers, etc: Nothing to this sort appears to have been done by the assessing authority in discharge of the aforesaid burden of Revenue in the present case.

7. Unless, the presumption of purchase of the damaged wheat in question as

cattle feed was rebutted by the other material brought on record by the assessing authority to establish that such commodity was not used or sold as cattle feed but otherwise, the imposition of tax with interest could not be allowed to sustain in the present case.

8. The facts of the case before the apex court in the case of Commissioner of Sales Tax Vs. Ram Chandra Asha Ram (Dead) through L. Rs., were slightly different. The assessee purchased damaged wheat from the Food Corporation of India as damaged wheat unfit for human consumption, subject to restriction to sell only on conversion into cattle fodder and after grinding it to be sold as cattle fodder. The High Court held that the cattle fodder sold by the respondent fell under item No. 10 of the exemption notification dated June 5, 1985. The apex court, affirming the decision of the High Court, held such cattle fodder was exempted under the Notification dated June 5, 1985 and in the generic sense the expression "cattle fodder" was inclusive of everything that was fed to cattle including damaged wheat. The M. P. High Court decision in the case of Kalloomal Samaldas Vs. Commissioner of Sales Tax, was distinguished by the apex court.

9. Before applying the said decision of the apex court to the facts of the present case, an enquiry into the transactions undertaken by the petitioner-assessee was necessary and, therefore, it is considered expedient that in the present case, the matter deserves to be remanded back to the assessing authority. Consequently, this revision petition is allowed and setting aside the orders passed by all the three authorities below, the matter is restored back to the assessing authority for decision afresh in accordance with law. No costs.

