(2003) 02 RAJ CK 0017

In the Rajasthan High Court

Case No : Sales Tax Revision No. 39 of 2001

Khaitan Electricals Ltd. APPELLANT

Vs

State of Raj. and Another RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 15

Citation : (2003) 2 RLW 1145 : (2003) 2 WLC 408

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Madhuri Singh, for the Appellant; G.S. Bapna, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—The petitioner M/s. Khaitan Electricals Ltd. is a manufacturer of Water-Pump-sets used in water coolers, which has filed this revision petition challenging the order of the Rajasthan Tax Board dated 16.2.99 by which it has upheld the order of the Deputy Commissioner of appeals as also the assessing authority who had imposed 2% further sales tax on water pump sets used in water coolers as it was held that 10% of sales tax which was paid by the petitioner was not correct as it should be paid at the rate of 12%. The controversy therefore which been raised in this revision petition is whether 12% sales tax is leviable on water pumps used in water coolers as per item 87 of the notification issued u/s 5 of the Rajasthan Sales Tax Act 1954 or it should be 10% as per item No. 105 which envisages 10% sales tax as general rate on all goods that are not covered by any other item in that notification which are given out from serial No. 1 to 104.

2. Learned counsel for the Pa etitioner Mrs. Madhuri Singh first of all submitted that the sales tax was paid by the petitioner on water pumps used in water coolers at the rate of 10% which was accepted by the Department of Commercial Taxes all through and for the first time in the year 1995-96 an objection was raised for the assessment year 1992-93 by the assessing authority on the ground that 12% sales tax is leviable on the aforesaid item and since the petitioner was

paying sales tax at the rate of 10% only, 2% was ordered to be realised. It was further submitted that this controversy was raised earlier also before the Rajasthan Tax Board in four appeals bearing Appeal No. 71/97 ST Jaipur, Appeal No. 72/97 ST Jaipur, Appeal No. 73/97 ST Jaipur and Appeal No. 74/97 ST Jaipur which were decided by two Members of the Rajasthan Tax Board on 16.2.99 and it was held therein that 2% above 10% making it 12% was not fit to be leviable as the petitioner had been realising the sales tax at the rate of 10% only. The Tax Board had relied upon the notification issued by the State Government bearing No. F4(69) FD/Tax/Divn/95-V-74 dated 23.7.96 wherein it was laid down that in exercise of the powers conferred by Section 15, RST Act 1994 the Slate Government hereby exempts from tax the sale or purchase of water pump sets with motor having capacity up to one horse power, for the period from 23.3.89 to 6.3.94 to the extent to which the rate of tax in respect thereof exceeds 10% on condition that the tax charged or collected on the sale of said goods shall be paid to the State Government and that the tax already paid to the State Government if any, shall not be refunded. The fall out of the order was that the tax on water pump sets used in water coolers by virtue of this notification was to be taxed at the rate of 10% only and not 12% as insisted by the Department of Commercial Taxes since it was held therein that there was no material on record to gather that the petitioner assessee had realised sale tax at the rate of 12%. It was further held that the extra 2% tax alongwith interest, was not fit to be sustained and hence the order imposing sales tax at the rate of 12% was set aside by the Board.

3. The Department of Commercial taxes preferred a revision petition before the High Court bearing No. 508/99 against the aforesaid order, but the revision petition was dismissed upholding the order of the Rajasthan Tax Board. However the assessing authority again raised the same dispute in the year 1995 as stated herebefore since it was insisted that sales tax at the rate of 12% was payable on the sale of water pump sets used in water coolers and not at the rate of 10% only as insisted by the assessee. This view was upheld in the appeal by the Rajasthan Tax Board in the instant matter which Was preferred before the Rajasthan Tax Board as this time the Rajasthan Tax Board took the view that it would be governed by item 87 of the Rajasthan notification issued under RST Act 1954 and not under residuary Item No. 105; hence 12% would be leviable and not 10%.

4. Learned counsel for the respondents Department of Commercial Taxes Mr. G.S. Bapna therefore submitted that the earlier dispute of the Rajasthan Tax Board allowing levy of 10% tax only on water pump set used in water coolers was not binding on the Tax Board on the subsequent occasion as the revision petition before the High Court against the earlier view of the Tax Board which was upheld and the revision petition of the department was dismissed does not mean that the same was binding on the Tax Board later as the High Court in revision petition No. 508/99 did not enter into the controversy as to whether 12% tax was leviable on water pump set used in water coolers or 10% only was

fit to be levied and the revision petition was dismissed by a summary order. Hence the earlier view cannot be held binding for all limes to come. Although this argument is not fit to be accepted, I do not consider it necessary to adjudicate upon this question since this revision petition can be decided on a more straighl-forward point which goes-in favour of the assessee as it has been pointed out that a notification No. F4(69)/FD/Tax/Divn/85-V-74 dated 23.7.1996 was issued by the Government of Rajasthan granting exemption from paying sale tax at the rate of 12% as it has been incorporated therein that it would be leviable at the rate of 10% only. Infact, this is the same notification which was relied upon by the Rajasthan Tax Board on the earlier occasion also which has been mentioned hereinbefore. However for facility of reference the same is reproduced as under:-

"In exercise of the powers conferred by Section 15, RST Act, 1994 the State Government (1) hereby exempts from tax the sale or purchase of water pumping sets with motor having capacity upto one horse power, for the period from 23.3.1989 to 6.3.1994, to the extent to which the rate of tax in respect thereof exceeds 10% on the following conditions, namely :-

(i) That the tax charged or collected on the sale of said goods shall be paid to the State Government; and

(ii) That the tax already paid to State Govt., if any, shall not be refunded.

5. From a perusal of this notification it is clear that the Government of Rajasthan itself has accepted that sales tax on water pump sets is leviable at the rate of 10% and not at the rate of 12%. This notification has never been challenged by the Department of Commercial Taxes nor the validity of this notification is under challenge herein and hence I do not propose to enter into the legality or jurisdiction of this notification and following this notification, the petitioner has a clear case that 10% tax only was fit to be levied on water pump sets used in water coolers. Hence, the Rajasthan Tax Board by the impugned order was not justified in upholding the order of the Deputy Commissioner of Appeals to the effect that 12% tax should be levied on water pump sets used in water coolers. The impugned order of the Tax Board dated 26.5.2001 is therefore, fit to be quashed and hence the same is set aside. Consequently, the orders passed by the Deputy Commissioner of Appeals as also of the Assessing Authority stands set aside. It is thus held that if the petitioner has already paid 10% sales tax on water pump sets used in water coolers, no further amount shall be leviable or realised by way of sales tax from the petitioner. Accordingly, this revision petition stands allowed without any order as to costs.