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**(1983) 04 RAJ CK 0009**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 531 of 1983**

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| Kota Box Manufacturing Co.    | Vs | APPELLANT  |
| State of Rajasthan and Others |    | RESPONDENT |

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**Date of Decision :** 28-04-1983

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Income Tax Act, 1961 — Section 34

**Citation :** (1983) 54 STC 284

**Hon'ble Judges :** N.M. Kasliwal, J

**Bench :** Single Bench

**Advocate :** P.C. Jain and Prem Asopa, for the Appellant; G.S. Bafna, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.M. Kasliwal, J.—Facts leading to this writ petition are that the petitioner, M/s. Kota Box Manufacturing Co., is a registered partnership firm and is carrying on business to manufacture cartons, etc., at Kota. The petitioner-company is a dealer under the provisions of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act").

2. The case of the petitioner is that it manufactures cartons, box, cones, made of paper, which are used for packing the goods. Craft paper is used for the manufacture of cartons and box. Paper rolls are nothing but craft paper exclusively used for packing purposes. Pigeon partition sets, disc, rings are also packing materials and form part and parcel of the cartons. The cartons manufactured by the petitioner are used for packing nylon, polyester yarn, wound on cones, cheese and bobbin for sale and delivery to the customers. In a carton craft paper bitumised packing material, pigeon partition set, disc, ring-top, bottom and side-liner are used.. All these things taken together form a carton. Corrugated rolls or paper rolls are used in packing. In exercise of the powers conferred by Section 5 of the Rajasthan Sales Tax Act, 1954, the State

Government notified vide Notification No. F. 2(8)FD/Gr. IV/75-9 dated 1st July, 1975, that the rate of tax payable by a dealer in respect of the goods specified in column 2 of the list annexed to, shall be as shown against them in column 3 of the said list. The relevant portion of the notification is reproduced as under :

No. Description of goods: Rate of tax  
7 Cartons, box, cones and cylinders made of paper or cardboards. 4 per cent  
8 Packing material, that is to say,- 4 per cent  
(a) gunny bags and hessian (b) jute twine (c) craft paper and craft paper-bags  
(d) ...

3. In the course of assessment year 1977-78 commencement from 20th November, 1976, to 30th November, 1977, the petitioner-company had sold cartons, corrugated rolls, top, bottom, side-liners, sleeves, pigeon partition and disc worth Rs. 52,14,409 and paid sales tax at 4 per cent, vide assessment order annexure 2 dated 17th April, 1979. The rate of sales tax at 4 per cent was charged on the basis of the above-mentioned notification dated 1st July, 1975. According to the petitioner-company the said assessment order has not been challenged by the department and has now become final and unassailable.

4. The Commercial Taxes Officer, Special Circle, Kota, purporting to act u/s 12 of the Act issued a notice dated 15th February, 1983, that in the assessment order dated 17th April, 1979, sales tax had been assessed at 4 per cent but the aforesaid materials were not covered under the notification dated 1st July, 1975 and the sales tax should have been charged at 7 per cent; as such a notice to show cause, vide annexure 3, has been issued as to why the reassessment of the amount of sales tax may not be made. The petitioner by this writ petition has challenged the notice annexure 3 dated 15th February, 1983, being illegal and without jurisdiction. The main contention of the petitioner is that it was not a case of escaped assessment within the meaning of Section 12 of the Act because the entire turnover had been disclosed by the assessee and had been considered by the assessing authority and after elaborate discussion the assessment order dated 17th April, 1979, had been passed. The provisions of Section 12 could only be invoked when there was reasonable ground for considering that the business of a dealer had escaped assessment to the tax or that has been assessed at too low a rate in a year. According to the petitioner, it was clearly mentioned in the assessment order dated 17th April, 1979, that after examining the bills, it had been discovered that the sale of side-liner and disc was of complete set of carton which included pigeon partition, side-liner, disc, etc. It has been further observed in the assessment order that there was no use of pigeon partition liner, disc, etc. and as such the rate of tax attracted was 4 per cent only. After elaborate discussion of the entire matter in the light of the decision of the Board of Revenue it was observed and decided that the corrugated sheets, rolls and pigeon partition were nothing but packing material. On the merits it is submitted that the case of the petitioner is covered under items Nos. 7 and 8 of the notification dated 1st July, 1975 and in both the categories the rate of sales tax is 4 per cent. It is contended that the expression "packing material" not

exhaustive but must be taken to include all the different variety of packing material including carton and its components which are used as packing materials in the carton or otherwise. Reliance is placed on *Mansatta Industries Pvt. Ltd. v. State of Gujarat* (1982) 3 STL (Guj) 220 and *Rashtra Deep Laboratory v. Commissioner of Sales Tax, U.P.* STI 1982 (All) 225.

5. On the other hand, it was contended by Mr. Bafna, the learned counsel for the department, that notice u/s 12 could be issued for any reason. In the present case in the assessment order dated 17th April, 1979, the items were erroneously charged at the concessional rate of tax treating the meaning of the words "packing material" as illustrative and as such the notice u/s 12 has rightly been issued. It is contended that the words "for any reason" used in Section 12(1) of the Act are wide enough and the powers of the Commercial Taxes Officer under the Section are not circumscribed by any condition. It is submitted that the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, has laid down that the expression "that is to say" is to be interpreted as exhaustive and only items specifically used in the entry can be used for concessional rate of tax. It is further contended that number of items have been added by notification in Table No. 90 of packing materials and that shows that the intention of the legislature was to make the list exhaustive. It is further contended that craft paper is only one of the items used in the manufacture of cartons. It is only one of the components of paper rolls, pigeon partition, disc, rings, corrugated sheets and paper-board, etc. The petitioner has suppressed the material facts and has not stated that all these items were being sold separately. It was further submitted by Mr. Bafna that so far as the craft paper is concerned the department is charging concessional rate at 4 per cent only but as regards the other materials, the petitioner-company is liable to pay sales tax at 7 per cent for which a notice has been rightly issued u/s 12 of the Act. It was further submitted that the writ petition involved disputed questions of fact which could properly be decided only by the assessing authority and in case the same were decided against the petitioner, it was open for him to pursue his remedy of appeal under the provisions of the Act. According to the petitioner's own saying he has filed an appeal against the order of reassessment relating to the year 1973-74 and there was no ground or justification for rushing to this Court in respect of the year 1977-78 only against a show cause notice issued u/s 12 of the Act. There was no question of jurisdiction involved in the present case and the entire controversy was based on disputed questions of fact and law which could appropriately be decided by the authorities under the Act. Reliance in support of the above contentions is placed on a Division Bench decision of this Court in *Bhanwarlal Binjaram v. Assistant Commercial Taxes Officer, Jodhpur* 1976 WLN (UC) 459.

6. At the time of filing of the present writ petition on 14th March, 1983, it was mentioned in Clause (r) of the grounds in the writ petition that a notice u/s 12 of the Act was served upon the petitioner by the assessing authority for the assessment year 1973-74 and an order was passed on 20th May, 1982, reopening the assessment and rate of taxes was charged at 7 per cent.

Aggrieved against the said assessment order, the petitioner has preferred an appeal before the Deputy Commissioner, Commercial Taxes, Kota, which was still pending. The case of the petitioner was that from this fact it would be evident that no useful purpose would be served in submitting a reply to show cause notice to the assessing authority as he had already made up his mind for the assessment year 1973-74 and the petitioner was thus left with no other efficacious remedy except to approach this Honourable Court under Article 226 of the Constitution of India. It was further mentioned that in the above-mentioned circumstances appearance before the assessing authority in response to show cause notice would be useless and will not serve any purpose for giving justice to the petitioner. However, during the course of arguments before this Court on 19th April, 1983, the learned counsel for the petitioner filed an order of the Deputy Commissioner (Appeals), Commercial Taxes, Kota, dated 28th February, 1983, whereby the appeal against the order of the Commercial Taxes Officer, Special Circle, Kota, dated 20th May, 1982, had been allowed in part. Mr. Bafna, the learned counsel for the department, submitted that the department would go in revision against the aforesaid order and in any case this further strengthens his contention that an efficacious alternative remedy is available to the petitioner under the Act and no interference should be made by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

7. I have given my careful consideration to the arguments advanced by the learned counsel for both the parties. The petitioner has filed the present writ petition only against a show cause notice issued to it u/s 12 of the Act. The petitioner has ample opportunity to appear before the assessing authority and to raise all the contentions before him, which have been raised before this Court in the present writ petition. There is a complete machinery of appeal and revision provided under the Act and this Court does not entertain a writ petition against the issuing of notice only, unless it is held that the assessing authority had no jurisdiction to issue such notice. A Division Bench of this Court in Bhanwarlal Binjaram's case 1976 WLN (UC) 459 had already held :

The writ petition cannot be entertained when the petitioner had an equally efficacious alternative remedy by way of appeal, revision and case stated. The Act has set up a complete machinery and hierarchy of Tribunals where these questions can be agited.

8. The petitioner has indeed, raised this very objection before the Assistant Commercial Taxes Officer. There is no reason why the petitioner should be permitted to by-pass the remedy provided by law. It was further held:

The words "for any reason" in Section 12(1) of the Act are wide enough and the powers of the Commercial Taxes Officer under the section are not circumscribed by any condition. In Maharajdhiraj Sir Kameshwar singh v. state of Bihar AIR 19 SC 1303, which used the same expression observed :

The use of the words any reason" which are of wide import dispenses with those

conditions by which Section 34 of the Indian Income Tax Act is circumscribed.

9. In view of the above pronouncement of the Division Bench of this Court that the words "for any reason" used in Section 12(1) of the Act are wide enough and the powers of the Commercial Taxes Officer under this section are not circumscribed by any condition, it cannot be said that the Commercial Taxes Officer had no jurisdiction to issue notices u/s 12 of the Act. That being so, the petitioner can raise all the objections before the Commercial Taxes Officer against the show cause notice and can pursue his remedies of appeal and revision available under the Act. According to the petitioner's own showing he had gone in appeal against the order of the Commercial Taxes Officer dated 20th May, for the assessment year 1973-74 and has been given relief by the Deputy Commissioner as such also no distinction can be made with regard to the assessment year in question, i.e., 1977-78, in respect of which the present writ petition has been filed. Merely because a new question of law has been raised, the petitioner is not entitled to by-pass the remedy provided in the Act and to approach this Court against the issuing of show cause notice u/s 12 of the Act.

10. In view of these circumstances, this writ petition fails on the ground of alternative and efficacious remedy available to the petitioner under the Act. In the facts and circumstances of the case there would be no order as to costs.