(2001) 09 RAJ CK 0145

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2541 of 2001

Kundanmal Sons — APPELLANT

Vs

State and Another — RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:
Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 — Section 9

Citation : (2002) 2 WLN 199

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—The amendment application filed during the course of hearing for bringing on record the assessment order passed in pursuance of the impugned notice challenging the same, as the assessment order has been communicated to the petitioner during the pendency of the writ petition. As it relates to the circumstances which have arisen subsequent to the filing of the writ petition and does not change the nature of the issue raised in the petition, the amendment is allowed and the petitioner is permitted to file the assessment order passed in pursuance of the impugned notices.

2. Heard learned Counsel for the parties.

3. The petitioner has filed the writ petition challenging the notice dt. 16.5.2001 passed by the Commercial Taxes Officer, Pali under Sections 3, 4 and 12 read with Rule 10 and u/s 13 read with Rule 14(6) of the Rajasthan Tax on Entry of Goods into Local Areas Act; 1999 (for short, ''the Act of 1999'') for making an assessment and levying penalty under Sub-section (2) of Section 17 pointing out that the petitioner is unregistered dealer and is liable to pay tax under the Act of 1999 but he has failed to submit the return of turnover/information within the time prescribed under Rule 11 and pay the tax thereon. It was also mentioned in the notice that as per entries in Pali Local area his grey cloth purchasing is

approx. Rs. 8 crores. The next date was fixed on 31.5.2001.

4. In response to this notice in the first instance, the petitioners submitted a letter to CTO concerned on that very date i.e. 16.5.2001 that he has commenced his business only on 19.4.2000. He also stated that his turnover from 19.4.2000 to 31st March, 2001 is more than five crores. He has also stated that he is yet to get himself registered under the Entry Tax Act. However, he did not mention the anything about his claim to exemption for financial year 2000-2001.

5. Thereafter, the petitioner moved an application to opt for exemption under Clause 6 of the Notification dt. 15th January, 2000 granting exemption to trade and business of all kinds of textiles on the conditions mentioned therein which was accompanied with an affidavit dt.21.5.2001, sworn by the proprietor of the dealer firm. The application was for claiming exemption for financial year 2001-2002. In this application he declared purchase value of textiles for immediately preceding year at Rs. 3 crore only, as against his own admission of Rs. 5 crore in his letter dt. 16.5.2001. For availing the exemption, the petitioner also deposited a sum of Rs. 30,000/- as a 1st half year instalment of compositon fee with application.

6. Thereafter, the petitioner was served with another notice dt. 31st May, 2001 pointing out breaches which he has committed in respect of financial year 2000-2001 and acknowledged the receipt of the application dt. 21st May, 2001 received on 23.5.2001 along with Treasury Receipt of Rs. 30,000/- as exemption fee for the period 1.4.2001 to 30.9.2001, which was filed on 23.5.2001. In reply to notice dt. 16th May, 2001, the petitioner submitted an application on 21st May, 2001 stating that the assessee has applied for issue of exemption certificate and has also filed treasury receipt of Rs. 30,000/- on the basis of turnover of purchases of the previous year ending on 31st March, 2001 and therefore, he is not liable to pay any tax.

7. In pursuance to notice dt.31st May, 2001 the petitioner filed another detailed reply on 27th June, 2001 before the date fixed for hearing on 28th June, 2001. In the reply he pointed out that notwithstanding his claim to total purchase value for financial year 2000-2001 at Rs. 3 crore only, he has paid maximum exemption fee payable under the scheme for claiming exemption for financial year 2001-2002. However, he further informed that he had now deposited on 26.6.2001 a further sum of Rs. 50,000/- as exemption fee as per notification dt. 15.1.2000, for Financial Year 2000-2001. It appears that after the present petition was filed, the petitioner has further deposited Rs. 10,000/- towards exemption fee for financial year 2000-2001 on 9.7.2001 which was placed on record along with additional affidavit dt. 10.7.2001. On 28th June, 2001 the petitioner wanted further adjournment which was refused and the petitioner filed this petition on 2nd July, 2001 challenging two notices.

8. Caveat has been entered on behalf of respondents and in pursuance of which it was brought to the notice of the Court that on 30th June, 2001 assessment

order has been passed by the concerned Assessing Authority which has led to filing of amendment application challenging the said assessment order also, as stated above.

9. The principal thrust of the petitioner''s case is that entry tax was imposed on import of goods within the State of Rajasthan by the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 which came into force w.e.f. 26th March, 1999, in terms of Section 3 of the Rajasthan Provisional Collection of Tax Act, 1958 when bill for the aforesaid Act was introduced in the legislative assembly as per Section 1 of the Act. The petitioner had commenced his business of trading in textile on 19th April, 2000. By Notification dated October 15, 1999 the State Govt. has prescribed different rates in respect of import of different goods within the local area of the State of Rajasthan which included rate on all kinds of textiles at 1.5%.

10. However, by subsequent Notification dated 15th Jan. 2000 in exercise of its power u/s 9 of the Act of 1999, the State Govt. has exempted the registered dealers from tax payable under the Act and receipt of all kinds of textiles on the conditions mentioned therein. According to the petitioner, it was retrospective in operation and under Clause 6 on making an application dealer is to be deemed registered under the Act and he becomes entitled to issue of a certificate of exemption. Since he applied for making application under Clause 6 dt. 21st May, 2001 he is deemed to be registered dealer under the Act from the date of commencement of his business. Having deposited the exemption fee in terms of Notification along with application no more tax was payable by him on his turnover for the period in question and no demand could be raised against him in addition to exemption fee payable under the exemption scheme. If for any reason the exemption fee is found to be more than what the petitioner has deposited, the same could be recovered with interest in terms of Clause 8 of the Scheme. Therefore, the petitioner having become entitled to exemption under the Scheme is not liable to be assessed in respect of his turnover under the regular provisions of the Act for any periods.

11. On the other hand, it is contended by Mr. Sanjeev Johari, learned Counsel for the revenue, that the exemption granted under the Notification is not absolute and unconditional but it is stringed with conditions. Until the claimant comes strictly within the four corners of condition subject to which he could avail the exemption, he cannot avail the benefit of exemption. The Notification extend benefit only to a registered dealer. The petitioner was not registered dealer throughout the period in question for which he claims exemption. Nor has he exercised option to avail benefit of exemption by making requisite application within time prescribed under the Notification, not even during the period in question. That being the position, the petitioner cannot avail any exemption in respect of period prior to making of application though he may be entitled to avail the benefit once he exercised his option under Clause 6 by submitting an application dt. 21.5.2001. In that regard he also invited the attention of the

Court to the relevant provision requiring a dealer to get himself registered under the Act of 1999 which inter alia provides that application for registration by a dealer, who commences his business after the commencement of the Act, has to be made within 30 days of such commencement under Rule 3 read with Section 11 of the Act. The petitioner did not make any such application either under Rule 3 or opted for the exemption under the Scheme within time after commencement of his trading activity w.e.f. 19.4.2000 so that he can be deemed to be a registered dealer under the Act. Therefore, he is not entitled to any exemption.

12. In order to understand the controversy it would be apposite to refer to the relevant provisions of the Scheme.

13. Under the Scheme, on 15th January, 2000 a Notification has been issued u/s 9 of the Act of 1999 exempting the registered dealers from tax payable under the Act in respect of all kinds of textiles on the following conditions, viz; (1) that such dealer is entitled to exemption who opts for scheme on or before 28th March, 2001 as per the amendment brought into effect by Notification dated 29th March, 2001 to pay exemption fee as per the table mentioned in Clause 1 or whether he opts for claim on or before 29th March, 2001, shall pay exemption fee as per the following table appended to Clause 1-A which was inserted on 29th March, 2001.

Category Annual purchase value No. of dealers Annual of all kinds of textiles as declared by Exemption in the immediately the Association Fee payable preceding year (in rupees) (in rupees)

A 1000001-500000 25000 600

B 5000001-1500000 30000 2500

C 15000001-2500000 30000 5000

D 25000001-4000000 20000 6000

E 40000001-7000000 10000 12500

F 70000001-10000000 3000 20000

G 100000000-30000000 1000 30000

H More than 30000000 250 60000

14. Here it may be noticed that in the Notification dated 15th Jan.2000 in Clause 1 expression used was "such dealers undertake to pay exemption fee". By Notification dated 29.3.2001 in the said expression ''undertake to'' was substituted with "who opts for this Scheme on or before 28.3.2001". Simultaneously, Clause 1-A was inserted which read as under:

After the existing Clause 1, the following shall be inserted, namely:"1-A. that such dealers, who opt for this Scheme on or after 29.03.2001, shall pay exemption fee as per the following table

15. That such dealers who opt for this scheme on or after 29.3.2001 and for them separate schedule of exemption fee was inserted under Clause I-A which is reproduced hereinabove.

16. Condition No. 2 is that on the purchase value for the purpose of the Notification is to be declared by dealer himself duly supported by an affidavit. Condition No. 3 is that the period of six months or part thereof shall be counted as one half year instalment for the purpose of determination of exemption fee. Condition No. 4 is that the annual exemption fee shall be payable in two equal half yearly instalments in advance up to 15th April and 15th October every year. However, to bring the period of half year ending on 31st March, 2000 within the purview of Scheme as the Scheme has been promulgated only on 15th January, 2000 it was envisaged that the exemption fee for the Financial Year 1999-2000 for the period from October 1999 to March, 2000 could be deposited by 30th June, 2000 as per the time extended from time to time which was initially fixed as 29th Feb., 2000 vide Notification dated 15th May, 2000, which was in the first instance extended to 30th June, 2000 vide Notification dated 30th March, 2000 but was restricted to 15th May, 2000 by Notification dated 24th April, 2000. However, vide Notification dated April, 24, 2000 it was further envisaged that the exemption fee for the Financial Year 2000-2001 could be deposited in advance by May 15, 2000 as against the date fixed in the Scheme is 15th April. For ready reference, the Notification dated 24th April, 2000 is reproduced herein below:

[F.4(17)/FD/Tax-Div/2000-348]

Jaipur, 24th April, 2000

S.O.37.--In exercise of the powers conferred by Section 9 of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 Rajasthan Act No. 13 of 1999, the State Government being of the opinion, hereby makes the following amendments in this Department''s Notification No. F.4(4) FD/Tax. Div./999 (S.O. No. 295), dated 15.1.2000 (as amended from time to time), namely,--

AMENDMENTS

In the said Notification.--

1. In Clause 4, for the existing expression "by 30 June, 2000; the expression "by May 15, 2000. Moreover, the first half yearly instalment of the exemption fee for the financial year 2000-2001, shall be deposited in advance by May 15, 2000.", shall be substituted.

2. In Clause 13, for the existing expression "up to 30 June, 2000" the expression "up to May 15, 2000", shall be substituted.

17. Thereafter, another Notification dated 30th June, 2000 was issued by which the date for depositing the exemption fee in respect of Financial Years 1999-2000 and 2000-2001 was extended up to 31st July, 2000 so also the date for submitting application for opting exemption for the Financial Year 1999-2000 and

''Financial Year 2000-2001 (with which petitioner is concerned) was extended up to 31st July, 2000. It was clearly envisaged thereunder that the dealer not opting for the Scheme by 31st July, 2000 shall have to pay tax at the notified rate as per Condition No. 6 which too was amended by Notification dated 30th June, 2000. The amended Clause 4 and Clause 6 as per the Scheme of Exemption notified under Notification dated 15th January, 2000 reads as under:

4. That the annual exemption fee shall be payable in two equal half yearly instalments in advance up to 15 April & 15 October, however, for the year 1999-2000 and 2000-2001, the due instalments of exemption fee shall be deposited up to 31st July, 2001.

6. That the dealers opting for the certificate of exemption shall submit an application in the format appended hereunder to his assessing authority alongwith the proof of deposit of the first instalment under this Notification, within six weeks of publication of this notification. However, for the Financial Year 1999-2000 and, 2000-2001, the application alongwith due instalment of exemption fee shall be submitted up to 31st July, 2000, the dealer not opting for the Scheme by 31st July, shall have to pay tax at the notified rate. Thereupon, he shall be deemed to be a registered under the Act and a certificate to this effect shall be issued to him by the assessing authority alongwith a certificate of exemption appended to this Notification.

18. Similarly, Clause 13 of the Scheme, as amended vide Notification 30th June, 2000, reads as under:

13. That in case 50% dealers as mentioned in categories A, B & C of Table-I of Condition No. 1 and 75% of dealers mentioned in categories D, E, F, G & H of table I and categories B, C & D of table-II of Condition No. 1 do not opt for this scheme, and pay first monthly instalment up to 31st July, 2000, the State Govt. shall be free to withdraw the scheme as such or to revise upwards annual exemption fee.

The other condition for claiming benefit of Scheme is that such dealer holds a valid certificate of exemption under the Notification to be obtained from his Assessing Authority for each financial year. The issue of certification of exemption is governed by Condition No. 6 quoted above.

19. From the above, it is apparent that the Scheme which has been brought vide Notification dated 15th January, 2000 permitting dealers in textile of different categories to opt for paying exemption fee at the prescribed rate under the Scheme in lieu of tax that becomes payable under the Act as per the rates notified thereunder. However, the exemption was not applicable to all the textile dealers automatically but depended on positive action by the dealer concerned by exercising option to claim exemption under the Scheme in the manner prescribed thereunder. It is true that notwithstanding the issuance of Notification on 15th January, 2000 which made it effective in respect of turnover for the Financial Year 1999-2000 also which had taken place prior to 15th January, 2000

but there is no indication that, apart from the period from 1999-2000 for which obviously the act of submitting option could have taken place only after the commencement of the scheme within the time prescribed thereunder, it enured in respect of a dealer who has not opted for the benefit under the Scheme, during which the act had been in force, within the time prescribed therefore, but opts thereafter, still a dealer shall be entitled to claim exemption retrospectively in respect of the period prior to which he has made an application in terms of Condition No. 6. Doubts, if any, about this aspect of the matter were set at rest by amendment in Clause 6 brought by Notification dated 30th June, 2000 making it clear that for the Financial Years 1999-2000 and 2000-2001 if the application conveying option with the due instalments of the exemption fee for the Financial Year 1999-2000 and the instalment for the first half year for the Financial Year 2000-2001 is not made prior to 31st July, 2000, such dealer shall have to pay tax at the notified rate. Thus, there is no room for doubt that unless an option is conveyed with requisite fee within the time prescribed, the dealer does not become entitled to exemption for any period prior to date of application, for the Financial Years 1999-2000 and 2000-2001.

20. In the present case, there is no dispute about the fact that the petitioner had commenced his business only on 19th April, 2000 and he could not have claimed any exemption in respect of Financial Year 1999-2000. For Financial Year 2000-2001 during the currency of which his business has commenced on 19th April, 2000, he was required to make his choice whether to opt for paying exemption fee under the Scheme or to pay tax at the notified rate, on or before 31st July, 2000 but he has not exercised such option until before 21st May, 2001 that is to say during the entire period of Financial Year 2000-2001 the petitioner has not submitted his application exercising his option for Scheme during the Financial Year 2000-2001 at all, not to say by 31st July, 2000. Not only this, alongwith his application dated 21st May, 2001 the exemption fee which he has paid through challan clearly goes to show that he has not exercised his option for Financial Year 2000-2001 but only for 2001-2002. He has deposited exemption fee only for the period from 1st April, 2001 to 30th Sept. 2001 namely first half year of the Financial Year 2001-2002 along with his application for exemption. The deposit of Rs. 50,000/- on 26.6.2001 and Rs. 10,000/- on 9.7.2001 towards exemption fee for Financial Year 2000-2001, cannot override the specific embargo envisaged under Clause (6) of the Scheme, which had already come into existence.

21. The above provision was in consonance with separate provisions made for exceptions governed by application made prior to 28.3.2001 which obviously could be made only in respect of Financial Years 1999-2000 and 2000-2001; and application made after 28.3.2001 to be governed under Clause 1-A, which will govern Financial Year 2001-2002 onwards.

22. In view of the aforesaid, no case is made out by the petitioner for claiming exemption in respect of his turnover in terms of the Scheme dated 15.1.2000 in

respect of Financial Year 2000-2001 which ended on 31st March, 2001.

23. It may further become clear when it is noticed that under Condition No. 5 a dealer has to obtain from his Assessing Authority a valid certificate of exemption for each financial year. It further goes to show that the exemption certificate obtained for one financial year automatically does not become valid for claiming benefit under the Scheme for the ensuring financial year or for the financial year prior thereto. There is no provision under the Scheme for issuing an exemption certificate for financial year for which the exemption is to be a valid which has already come to an end except for the Financial Year 1999-2000 with which we are not concerned or to make an application for the Financial Year 2000-2001 within the extended period. It is the certificate issued under Condition No.6 which is deemed to be the assessment order cum demand notice and no separate assessment order is required to be passed. Therefore, deposit of instalment of exemption fee for the part of the financial year during which application is made is a sine qua non before claiming exemption even for that part of the financial year. If a person is already an existing trader, he is required to make an application in the first instance when the Scheme was promulgated within the period prescribed therefore. Thereafter, the exemption certificate for ensuing financial year is issued on payment of annual exemption fee. The annual exemption fee is payable in two equal half yearly instalments in advance up to 15th April, and 15th October respectively. It is only in respect of payment after exercise of option of such instalment under Clause (6) read with Clause (1) or Clause 1-A as the case may be on the basis of which exemption certificate is issued for the half year or the whole year as the case may be that that certificate carrying the proof of deposit of half yearly instalment serves as an assessment cum demand notice to absolve, a trader in textile from further return of payment of tax at the notified rate. Interest on delayed payment of exemption fee under Clause 8, can obviously relate to amount that is required to be paid along with or after conveying dealer''s option to adopt the scheme.

24. On claiming for such exemption, it is also not open for the dealer to collect any tax under the Act from the buyers and if for that period for which he is availing exemption during the financial year, exemption fee is not deposited by the 15th of April, but deposited later on, then in order to avail the benefit of the scheme for which instalment has been deposited, it has to bear the interest alongwith a penalty equal to 50% of the tax amount outstanding against him. It is only on such payment of the instalments before the date fixed under the Scheme or payment of due instalment alongwith interest and penalty thereon later on that a trader can claim the certificate of exemption for the current financial year only.

25. I have already noticed above that not only the petitioner has not submitted any application during the year 2000-2001 but has not made any application for claiming exemption for 2000-2001 at all, inasmuch as the deposit of the instalment made by him alongwith his application on 21st May, 2001 is only for

the first half of the Financial Year 2001-2002. The period for which exemption is claimed under application also mentions only for financial year 2001-2002. Whatever the benefit on account of that application can accrue to the petitioner would be on the turnover for the Financial Year 2001-2002 and not to the anterior period, not to any period beyond the half year for which he has paid the exemption fee.

26. The amendment brought by Notification dated 29th March, 2001 relate to change in the rate of exemption fee payable by dividing the period during which such table is in operation in two parts; namely in those cases in which an application has been made after 29th March, 2001 and applications made prior to 29th March, 2001. However, it does not lead to any inference that in respect of dealers who opt for the Scheme on or after 29th March, 2001 will also be entitled to avail the benefit of the Scheme for the Financial Year 2000-2001 for which no such application was made when it was due. It has been noticed that no change has been made in Condition No. 6 spelling out clear embargo on availing the benefit of the Scheme for the Financial Year 1999-2000 and 2000- 2001 in case no application is made by 31st July, 2000 for opting benefit for the respective financial years. Subsequent payments made on 26.6.2001 and 9.7.2001 towards tax of 2000-2001 cannot result in securing benefit of the Exemption Scheme. Said amount can only be adjusted against liability of tax determined under the Act of 1999 at the rates of tax prescribed.

27. The fact that an application being made for exemption under Condition No. 6 of the Scheme, a dealer is deemed to be registered under the Act, does not enures for the period prior to the date of making of an application in respect of an application which has been made after 31st July, 2000 for the Financial Years 1999-2000 and 2000-2001 and in no case the application made for the Financial Year 2001-2002 can enure for the benefit of the petitioner for laying claim to the benefit of Scheme for the Financial Year 2000-2001.

28. The petition accordingly fails and is hereby dismissed.