
(2001) 10 RAJ CK 0107
In the Rajasthan High Court
Case No : Civil Special Appeal No. 731 of 2001

Kundanmal Sons

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 — Section 3(1)

Citation : (2002) 4 WLN 303

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—Heard Mr. Vineet Kothari, learned Counsel for the appellant-assessee and Mr. Sanjeev Johri learned Counsel for the department.

2. This special appeal u/s 18 of the Rajasthan High Court Ordinance is preferred against the order of the learned Single Judge dated 3.9.2001 dismissing the writ petition in limine by a detailed order after examining the issues involved in depth and detail.

3. The appellant (hereinafter referred to as "the petitioner firm") is engaged in the business of trading in textile i.e. purchase of grey cloths, getting them processed and selling the same w.e.f. 19.4.2000 i.e. during the financial year 2000-2001. The petitioner firm being a dealer within the definition of Sub-clause (e) of Section 2 of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (hereinafter referred to as "the Act of 1999"), which came into effect from 26.3.1999, was required to pay the tax on the basis of annual turn-over of the important goods during the year ending from 31.3.1999. The petitioner firm was also liable to get registered in the manner provided in the Act and the Rules. The State Government by notification dated 15.10.1999 in exercise of powers conferred by Sub-section (1) of Section 3 of the Act of 1999 in supersession of notification dated 26.3.1999 specified the tax payable by a dealer brought into

any local area for consumption or sale therein was liable to pay at the rate in the column 3 of the list provided therein. The item No. 6 is relevant in the present context which provides the rate of tax at 1.5% on all kinds of textile. It is stated that there was strong agitation and representation against the levy of such entry tax on the textile within the State of Rajasthan as such the State Government introduced an exemption scheme for the Rajasthan Dealers by notification dated 15.1.2000 whereby the exemption fee was payable on certain slabs of annual turn-over. As per the scheme, only such of the dealers were entitled to the benefit of the scheme who opt on or before 28.3.2000 and as per the subsequent amendment, pay the exemption fee as per the table mentioned in Clause 1 or it opts for the claim on or before 29.3.2001. Such of the dealers who opts for scheme on or before 29.3.2001 shall be entitled for exemption fee so inserted under Clause 1-A. By another notification dated 30.6.2000 with respect to the financial years 1999-2000 and 2000-2001, the dates for depositing the exemption fee was extended upto 30.7.2000 and so also the date for submitting the application for opting exemption for the said financial years was extended upto 31.7.2000. It was clearly envisaged that the dealer not opting for scheme by 31.7.2000 shall have to pay tax at the notified rate as per condition No. 6.

4. As the contention of the learned Counsel is more concentrated on amended conditions No. 6 and 8, the same is extracted as follows:

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, duly supported by an affidavit. 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;

7. ...;

8. that is case where the dealer fails to pay the whole or part of such amount of the exemption fee in the above manner and in the stipulated period, he shall be liable to pay the outstanding amount of exemption fee and penalty equal to 50% of such exemption fee outstanding against him alongwith the interest as per law;

5. The petitioner firm neither paid the entry tax at the notified rate of 1.5% nor opted for the exemption scheme. The business premises of the petitioner firm was surveyed on 16.5.2001. On the basis of the survey report, a show cause notice was issued to the petitioner firm for best judgment assessment for the period 2000-2001, whereby the petitioner was asked to show cause on 31.5.2001. In response of the said notice, it was stated on behalf of the petitioner firm that it commenced its business only on 19.4.2000 and turn-over for the period 19.4.2000 to 31.3.2000 was more than Rs. 5 crores. It is also stated that the petitioner firm was yet to get itself registered under the Act of 1992. Nothing was mentioned on behalf of the firm about its claim about

exemption for the financial year 2000-2001. On 21.5.2001, the petitioner firm moved an application to opt for exemption under Clause 6 of the notification dated 15.1.2000 granting exemption to trade and business of all kinds of textiles on the conditions mentioned therein which was accompanied with the affidavit dated 21.5.2001 sworn by the proprietor of the dealer firm. By the said application, petitioner firm claimed exemption for the financial year 2001-2002 and not 2000-2001. The value of the textiles for immediate preceding year (i.e. 2000- 2001) was declared at Rs. 3 crores only. The petitioner also deposited a sum of Rs. 30,000/- as a first half year instalment of composition fee alongwith exemption application. Thereafter, the petitioner was served with another notice dated 31.5.2001 pointing out purchases which it had committed with respect to the financial year 2000-2001. In reply to the notice, it was pointed out that a further sum of Rs. 50,000/- has been deposited on 26.6.2001 as exemption fee for the financial year 2000-2001. A sum of Rs. 10,000/- was also deposited subsequently. The petitioner firm filed the instant writ petition challenging the notice. Pending the writ petition, assessment order was passed on 30.6.2001 wherein the annual turn-over was assessed at Rs. 8 crores. The tax liability of the petitioner firm was determined at Rs. 29,50,000/- after adjusting the amount already deposited under the exemption scheme. By way of the amendment of the writ petition, the petitioner has challenged the said order of the assessment as well.

6. We do not consider it necessary to extract all the relevant provisions of the Act of 1999, rules, notifications and amendments issued from time to time as they have been incorporated in the impugned order under appeal.

7. The learned Single Judge has held that the petitioner during the entire period of financial year 2000-2001 did not submit his application exercising option for the exemption scheme. He opted for it only for the financial year 2001-2002. The exemption fee for the period 1.4.2001 to 30.9.2001 was deposited for the first half year of the financial year 2001-2002 alongwith exemption application. The learned Single Judge concluded that the petitioner failed to make out the case for claiming exemption in respect of its turn-over in terms of the scheme dated 15.1.2000 in respect of the financial year 2000-2001 which ended on 31.3.2001. Dealing with Clause 8 the learned Single Judge held that the interest on the delayed payment of the exemption fee relates to the amount that is required to be paid alongwith or after conveying dealer's option to adopt the scheme. Accordingly, the learned Single Judge rejected the writ petition.

8. It is contended by Mr. Vineet Kothari, learned Counsel for the appellant-petitioner that the learned Single Judge has committed error in not considering that notification dated 15.1.2000 is retrospective in operation and as such as application option the exemption scheme dated 21.5.2001 is deemed to have been registered within time for the benefit of the exemption scheme. It is also argued that petitioner having deposited the exemption fee in terms of the notification alongwith the application, no more tax was payable by him on its

turn-over for the period in question and no demand could have been raised against it in addition to the exemption fee payable under the exemption scheme. It is further argued that the learned Single Judge has ignored the effect of the condition No. 8. It is also submitted that the notification dated 15.1.2001 (Annexure-1) in pith and substance is a notification providing for rate of tax only for different slabs of turn-over. In order to levy a fees for the service rendered, the levy must confer special benefit on the person on whom it is imposed. The learned Counsel has refer to the decision of the Apex Court in Corporation of Calcutta and Another Vs. Liberty Cinema, The learned Counsel has also referred to another decision of the Apex Court in Indian Mica Micanite Industries Vs. The State of Bihar and Others, On the other hand, Mr. Sanjeev Johari, learned Counsel for the department has supported the judgment of the learned Single Judge.

9. We have carefully considered the rival contentions. It is not in dispute that only after the survey which was conducted on the business premises of the petitioner on 16.5.2001, the application dated 21.5.2001 opting exemption was submitted. It is also not in dispute that under the scheme dated 15.1.2000 and as per the amendment brought into the effect by notification dated 29.5.2001 such an application for exemption should have been submitted latest by 29.3.2001. There is nothing on record to indicate that petitioner opted for the scheme for the financial year 2000-2001. The petitioner commenced the business on 19.4.2000 and as per the scheme he was required to submit the application within 30 days. As already stated the petitioner did not opt even during the extended period. Thus, the petitioner is not entitled to get any benefit under Clause 6 of the scheme. So far as the contention raised as to acceptance of application opting exemption in case of delay, a careful reading of the Clause 8 shows that the word "delay" referred in the said clause is not with reference to the application of the dealer opting for the certificate of exemption but refers to a case where after registration the dealer has not paid the whole or part of the amount of the exemption fee within the stipulated period. Thus, the contention of the learned Counsel to the effect that even if there is a delay in submitting the application for opting the certificate of exemption, the same can be condoned under Clause 8 on certain conditions is misplaced and deserves to be rejected. The learned Counsel has raised contention with respect to the levy of fee in lieu of service rendered, it cannot be permitted to be raised as no plea in this regard has been raised before the learned Single Judge. It is held by the Apex Court in the case of State of T.N. and Another Vs. Sun Paper Mills and Another, that a permission to argue a point without pleadings cannot be granted. The petitioner is not a bona fide applicant for the certificate of exemption, as after evading the tax for the financial year 2000- 2001 when his business premises was surveyed, the petitioner firm submitted such an application on 21.5.2001. On consideration of the entire material, we cannot escape from the conclusion that petitioner firm is a tax evader of substantial sum and the instant writ petition and the special appeal are gross abuse of the process of the court.

10. We do not find any justified reason to interfere with the order of the learned Single Judge. The special appeal is dismissed in limine.