(2010) 03 RAJ CK 0100

In the Rajasthan High Court

Lahar Ice Cream Factory Masooriya APPELLANT

Vs

ACTO RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 5

Citation : (2011) 42 VST 453

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition is directed against the order of the Tax Board dated 6th October, 2008 whereby the Tax Board has held against the assessee that the assessee, manufacturer and seller of ice cream /ice-candy does not fall within the ambit and scope of Notification No. 815 : F.4(72)FDGr.IV/87-43 dated 27.6.1990.

2. Learned Counsel for the petitioner assessee Mr. Dinesh Mehta argued that the said assessee can fall within the scope of term ''other eating establishment'' employed in the aforesaid notification.

3. On the other hand, Mr. V.K. Mathur appearing for Revenue submitted that the class of dealers specified in the said notification did not include the manufacture of any eating items and, therefore, the ice cream manufacturer, the present assessee cannot fall within the scope of said notification and, therefore, the Tax Board was justified in denying the said benefit to the assessee.

4. Having heard learned Counsels and upon perusal of the said notification, which is reproduced below, this Court finds considerable force in the submissions made by the learned Counsel for the Revenue:

S. No. 815 : F.4(72) FDGr.IV/87-43 dated 27.6.1990 S.O.122.- In exercise of the powers conferred by S.5, RST Act, 1954, and suppression of this Deptt. Notfns

No. F.4 (72)FDGr.IV/87-60 dated 31.8.1987, as amended from time to time [S. No. 692], the State Govt. [.8.] hereby notifies that Halwais, Keepers of hotels excluding the hotels of Three Stars and above category (as categorised by the Department of Tourism, Government of India), Restaurants, Refreshment rooms and other eating establishments, Tea stalls, Dhabas or Tandoorwalas, shall pay tax on their taxable turnover as under, namely:

(1) Those whose annual gross turnover does not exceed Rs. two lacs. NIL (2) Those whose annual gross turnover exceeds Rs. two lacs excluding the turnover of Imported Liquor for every completed five thousand rupees of taxable turnover [over gross turnover of Rs. two lacs.] Rs. 300.00

5. The class of dealers who are included in the said notification are Halwai, Keepers of hotels, restaurants, refreshment rooms and other eating establishments, tea stalls, Dhabas and Tandoorwalas. These words read ejusdem generis mean, in the opinion of this Court, that the eating places and outlets and service centers where tea and other eatables are served for consumption by the consumers of such eatables are only included to be covered by the said notification and not the manufacturers of the items like ice cream/ candy which the present petitioner assessee undoubtedly and unequivocally claims to be.

6. There is another difficulty in the case of the petitioner assessee. This contention of the present assessee that manufacturer of ice cream (candy) falls within the words ''other eating establishment'' was never raised before any of the three authorities below. Even in the reply filed before the learned Assessing Authority by the assessee himself claims that the assessee is engaged in manufacture and sale of Kulfi ice candy and, therefore, claimed exemption under the said notification. Nowhere the assessee has contended that he falls within the ambit and scope of ''other eating establishment''. It is undoubted that it would be a question of fact and unless such a fact was established and argued before the authorities below, such a contention cannot be permitted to be raised in revisional jurisdiction of this Court for the first time. The said contention, therefore, deserves to be turned down on this preliminary ground itself. Even otherwise this Court is of the view that a manufacturer of the ice cream cannot fall within the ambit and scope of said notification as the class of dealers which are intended to be exempted upto the limit of two lacs turn over and then taxed on slab wise basis, cover only the place of outlets where eatables are served for consumption directly by the consumers. A manufacturer of ice cream / candy who manufactures such ice cream in his own factory premises and then sells or distributes the same to various such eating establishments or restaurants, itself cannot claim such exemption under the said notification because such manufacturer is a class of dealer which is not included in the class of dealers specified in the said Notification. The contention before the Tax Board on behalf of the petitioner assessee was that the petitioner assessee falls within the category of ''Halwai'' which has been rightly rejected by the learned Tax Board. The said contention was not even seriously pressed by the learned Counsel for

the assessee before this Court and rightly so.

7. Consequently, this Court finds no force in the present revision petition filed by the assessee and the same is accordingly dismissed. No costs.

