

**(2003) 03 RAJ CK 0007**

**In the Rajasthan High Court**

**Case No : Civil Special Appeal No. 497 of 2002**

Lakshmi Cement

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

**Date of Decision : 24-03-2003**

**Acts Referred:**

Rajasthan Sales Tax Act, 1994 — Section 30, 30(1)

**Citation : (2004) 137 STC 74**

**Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J**

**Bench : Division Bench**

**Advocate : S. Ganesh and Rajendra Mehta, for the Appellant; Sangeet Lodha and Suman Porwal, for the Respondent**

## **Judgement**

1. This special appeal is directed against the judgment of the learned single Judge dated July 24, 2002, Reported in Lakshmi Cement Vs. State of Rajasthan and Another, dismissing the appellant's writ petition challenging the reassessment notice dated April 19, 2001 given by the Commercial Taxes Officer, Anti Evasion, Rajasthan, Circle-I, Jaipur, u/s 30 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the RST Act") read with Section 9 of the Central Sales Tax Act, 1956, (hereinafter referred to as "the CST Act") for the assessment year 1997-98.

2. Briefly stated the facts of the case are that the appellant is, inter alia, engaged in the business of manufacturing and selling Portland cement and it is registered dealer under the RST Act and the CST Act. The appellant started production of cement before the year 1984-85. Its regular CST assessments for the assessment years 1989-90 and 1990-91 were made by the assessing authority, i.e., Commercial Taxes Officer, Special Circle, Pali, vide assessment orders dated December 11, 1991 and May 20, 1993 respectively. At this stage, it would be relevant to mention that the State of Rajasthan issued a notification dated May 6, 1986 in exercise of powers u/s 8(5) of the CST Act allowing partial exemption from tax payable in respect of inter-State sales in the manner and subject to the

conditions mentioned therein. This exemption was granted to provide incentive to reduce branch/stock transfers on which no tax is leviable in the State and to increase the inter-State sale on which the tax is leviable under the CST Act. The twin objectives which the notification seeks to achieve is to increase the quantum of goods sold in the course of inter-State trade while reducing the quantum of branch/stock transfers so as to increase the State revenue. The partial exemption given at the rate of 50 per cent/75 per cent of the CST based upon the increase in the percentage of inter-State sales and decrease in the percentage of stock/branch transfers in comparison to the corresponding percentage of the base year 1984-85. Thus, the appellant submitted an application dated July 5, 1994 before the Commercial Taxes Officer, Special Circle, Pali, to determine percentage of inter-State sales and branch transfers of non-levy cement effected by it during the base year in order to avail the benefit under the above referred notification dated May 6, 1986. The Commercial Taxes Officer, Special Circle, Pali, by order dated February 3, 1995 after verifying and scrutinising the record of the appellant, determined the following percentage of inter-State sales, branch transfers and intra-State sales of non-levy cement of the base year 1984-85 in terms of the notification dated May 6, 1988 as follows :

"Branch transfers 85.28 per cent Inter-State Sales 2.51 per cent Intra-State Sales 12.21 per cent."

3. In the aforesaid calculation, the quantum of levy cement was excluded. At this stage, it would also be relevant to mention that up to the year 1988-89, the supply and distribution of the cement was regulated in terms of the control orders issued by the State Government. The levy obligation at fixed price was applicable on cement manufacturers at a fixed percentage of production and companies like the appellant were under the mandatory obligation to comply with the same. On production of cement earmarked for sale under levy obligation, the companies like the appellant had no control either on the price or the sale. The say of the appellant is that it could have effected normal sales only of the remaining quantity of cement by way of inter-State sale, intra-State sale or sale outside the State by way of branch/stock transfer. Thus in the sales tax assessment, the levy sales were shown and worked out separately. The levy cement control remained in force during the year 1984-85 to 1988-89. The benefit of 1986 Notification is not available on the levy cement. Thus, according to the appellant, the quantum of levy cement sales cannot be taken into account for granting partial exemption. In the light of the aforesaid order dated February 3, 1995, the appellant moved rectification application before the assessing authority in respect of both the said assessment years seeking partial exemption in respect of tax on inter-State sales of non-levy cement effected by the appellant during the said years on the basis of the notification dated May 6, 1986 based on excluding levy percentage determined vide the said order. The rectification application was rejected by the order of the assessing authority dated September 29, 1986 on the ground that the claim for the partial exemption was not made within time. On appeal, the Deputy Commissioner

(Appeals) expressed the view that the notification dated May 6, 1986 did not provide for any time-limit for claiming exemption. Accordingly, he remitted the matter to the assessing authority with the direction to allow the benefit of partial exemption in respect of inter-State sales of non-levy cement. The assessing authority found that the inter-State sale had increased in both the years taking the base year of 1984-85. Thus, a direction was given that if the appellant had deposited the partial exemption amount, the same may be refunded. He, however, did not allow the interest on the said amount of refund. For the assessment year 1991-92, the appellant claimed benefit in his pending appeal before the Deputy Commissioner (Appeals). This appeal was rejected vide order dated October 7, 1996. The second appeal against the said order is pending before the Rajasthan Tax Board. The appellant did not claim partial exemption in relation to the assessment years 1995-96 and 1996-97. The Commercial Taxes Officer, Anti Evasion, Pali, allowed the partial exemption vide CST assessment order dated July 20, 1999 for the assessment year 1997-98 on the basis of non-levy percentage of the base year 1984-85. The assessing authority did not allow the partial exemption for the assessment year 1998-99 vide CST assessment order dated January 15, 2001 taking different interpretation of the partial exemption notification by taking into account percentage of the base year inclusive of levy cement. The appellant's appeal against the said assessment order is pending before the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur. Thus, the appellant has been granted benefit of partial exemption on the basis of excluding the levy cement sales for the assessment years 1989-90, 1990-91, 1992-93, 1993-94 and 1994-95. The appellant did not claim partial exemption for the assessment years 1995-96 and 1996-97. Again, the benefit of partial exemption has been granted for the assessment years 1997-98. The appeals are pending in relation to the assessment years 1991-92 and 1998-99. The reassessment is sought for the assessment year 1997-98 by the impugned notice dated April 19, 2001. It is alleged that the said notice is based on the survey conducted by the second respondent, i.e., the Commercial Taxes Officer, Anti Evasion.

4. The appellant challenged the reassessment notice, inter alia, on the ground that the reassessment was not permissible on mere change of opinion. Heavy reliance was placed on the division Bench judgment of this Court rendered in *Black Stone Rubber Industries Pvt. Ltd. v. State of Rajasthan* reported in [2001] 124 STC 130 : (2001) 3 RLW 1486. The reassessment notice was also challenged on the ground that the officers of the Anti Evasion Wing of the Commercial Taxes Department has no jurisdiction to issue the impugned notice, inasmuch as such officers can acquire jurisdiction only in case of evasion of tax deducted by them under the relevant notification. The petitioner also sought interpretation of the notification dated May 6, 1986 that the benefit of partial exemption is available on the basis of percentage of appellant's inter-State sale, intra-State sale and branch transfers of the base year 1984-85 by excluding levy cement sales. The learned single Judge on consideration of the various judgments of the apex Court

and this Court held that the expression "for any reason" is wide enough to include the "change of opinion". In the opinion of the learned single Judge, wrong grant of an exemption can be considered as contingency which is good enough to engulf into escapement. The learned single Judge also found the judgment of the division Bench of this Court in Black Stone Rubber's case [2001] 124 STC 130 : (2001) 3 RLW 1486 not a good law, as it runs contrary to the law laid down by the apex Court in Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, . It appears that the learned single Judge has not given any finding with respect to interpretation of the notification of 1986.

5. Mr. S. Ganesh learned Senior Advocate assisted by Mr. Rajendra Mehta appearing for the appellant has contended that the learned single Judge has committed serious error in refusing to rely on the binding decision of the division Bench of this Court in Black Stone Rubber's case [2001] 124 STC 130 : (2001) 3 RLW 1486. It is submitted that even the analysis of the earlier judgment is binding on the court. It is further submitted that the State has accepted the judgment of the division Bench of this Court rendered in Black Stone Rubber's case [2001] 124 STC 130 : (2001) 3 RLW 1486 by not challenging further before the apex Court. Thus, it is not open for the State now to urge that the Black Stone Rubber's case [2001] 124 STC 130 ; (2001) 3 RLW 1486 does not lay down the correct law. Learned counsel has placed reliance on decisions of the apex Court in Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, and Union of India and Others Vs. Kaumudini Narayan Dalal and Another, . Learned counsel has also addressed on the question of jurisdiction of the Commercial Taxes Officer, Anti Evasion, to issue the notice. It is vehemently argued that the learned single Judge has committed error in not deciding the pure question of law regarding the interpretation of the notification dated May 6, 1986 which was the core issue involved and the main bone of contention. It is submitted that while calculating the percentage, the assessing authority himself has excluded the sales of levy cement and the benefit of notification has been given. Learned counsel has analysed the notification of 1986. Much emphasis is laid on the words used "such goods". It is submitted that the Clause (1) will have to be read with Clause (4) which clearly provides that no claim for such deduction of tax shall be allowed in respect of levy cement.

6. On the other hand, Mr. Sangeet Lodha has vigorously argued that the division Bench judgment of this Court in Black Stone Rubber's case [2001] 124 STC 130 : (2001) 3 RLW 1486 has no application to the facts of the instant case, inasmuch as the said case pertains to Section 12 of the old Act. It is further submitted that the said judgment not only runs counter to the earlier two division Bench judgments of this Court in Akbarali Amanatali v. Assistant Commercial Taxes Officer reported in (1976) RLW 648 and Bhanwar Lal Binjaram v. Assistant Commercial Taxes Officer reported in (1976) WLN (UC) 459 but also to the binding decision of the apex Court in Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, Learned counsel has read before us the entire judgment of the division Bench in Black Stone Rubber's case [2001] 124 STC 130 (Raj) :

(2001) 3 RLW 1486 and urged as to how the earlier decisions of this Court have been misread.

7. In *Black Stone's* case [2001] 124 STC 130; (2001) 3 RLW 1486, the division Bench held that the expression "for any reason" cannot go in the realm of assuming the expression "for any reason" to bring in mere change of opinion to have a just second look on the very issue and material for drawing different conclusions either because the same officer having a second thought or a successor officer holding a different view within its compass. The division Bench relied upon the earlier division Bench judgment of this Court in *National Clinic v. Assistant Commercial Taxes Officer* reported in (1966) RLW 257, wherein it was held that mere change of opinion will not be enough to initiate an action because in very nature of things, it will not be reasonable thing to do. However, in the subsequent decision of the division Bench in *Akbarali Amanatali v. Assistant Commercial Taxes Officer* reported in (1976) RLW 648, the Court held that the words "for any reason" in Section 12(1) of the Act, are wide enough and the power of the Commercial Taxes Officer is not circumscribed by any condition. The said decision was followed in the matter of *Bhanwar Lal Binjaram v. Assistant Commercial Taxes Officer* reported in (1976) WLN (UC) 459 (Raj) and it was held that the expression "for any reason" is wide enough to include even the change of opinion. The apex Court in *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, dealing with Section 26 of the Bihar Agricultural Income Tax Act, which is in pari materia to Section 12 of the Act, held that the use of words "any reason" which are of wide import dispenses with those conditions by which Section 34 of the Income- tax Act is circumscribed. It is submitted that the expression "for any reason" used in Clause (b) of Sub-section (1) of Section 30 of the Act of 1994 and the expression "in any way and under any circumstances" used in Clause (c) of Sub-section (1) of Section 30 of the Act of 1994 are of even wider amplitude than only expression "for any reason" used in Sub-section (1) of Section 12 of the Act of 1954. It is argued that the expression used in Section 30 of the Act of 1994 deserves to be interpreted in the light of the various decisions of the apex Court and it leaves no manner of doubt that the Legislature intended to empower the assessing authority with the power even wider than the power they were given under the provisions of Section 12(1) of the Act of 1954. It is urged that the expression in Section 30 of the Act of 1994 in their realm even includes "mere change of opinion". It is submitted that the ratio laid down in *Black Stone's* case [2001] 124 STC 130 (Raj) : (2001) 3 RLW 1486 , runs counter to the decision of the apex Court in *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*,

8. Mr. Rajendra Mehta, learned counsel appearing for the petitioners, submitted that the division Bench has rightly distinguished the decision of the apex Court in *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, . Learned counsel has referred to the decision of the apex Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Dhanalakshmi Vilas Cashew Co.* reported in [1969] 24 STC 491 . He has also referred to another decision of the

apex Court in Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills,

9. A review of the division Bench judgment of this Court and that of the apex Court reveals that there are two sets of judgments ; one taking the view that reassessment power can be exercised even on mere change of opinion on account of the use of the words "for any reason" and another set wherein it has been held that such power cannot be invoked on mere change of opinion. However, there is a unanimity in learned counsel for both the parties that the learned single Judge should not have embarked upon the enquiry as to whether the decision given by the division Bench in Black Stone's case [2001] 124 STC 130 (Raj) : (2001) 3 RLW 1486 is correctly decided or not. The only course open to the learned single Judge was either to follow the decision rendered in Black Stone's case [2001] 124 STC 130 : (2001) 3 RLW 1486 or request the Honourable Chief Justice to constitute a Full Bench for deciding the issue.

10. Considering the facts and circumstances of the case and in order to maintain judicial propriety and decorum and following the well-settled principles in this regard, this Court while sitting in the division Bench will not be in a position to embark upon the enquiry about the correctness of the decision of the division Bench in Black Stone's case [2001] 124 STC 130 : (2001) 3 RLW 1486 and, therefore, we consider it appropriate to refer the following questions of law for consideration and decision by a larger Bench :

(i) Whether the expression "for any reason" used in Section 30(1)(b) of the Rajasthan Sales Tax Act, 1994 and the expression "in any way and under any circumstances" used in Section 30(1)(c) of the Rajasthan Sales Tax Act, 1994, are of wide import and include the realm even mere change of opinion ?

(ii) Whether the law laid down by the division Bench in Black Stones Rubber Industries's case reported in [2001] 124 STC 130 (Raj) : (2001) 3 RLW 1486, runs contrary to the law laid down in earlier division Bench decisions and the decisions of the apex Court ?

11. Let the matter be placed before the honourable Chief Justice for constitution of the larger Bench for consideration of above referred questions.