(2002) 02 RAJ CK 0134

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3486 of 2001

Mona Granites P. Ltd. — APPELLANT

Vs

State of Rajasthan and Another — RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Sales Tax Act, 1994 — Section 29, 58, 61, 65

Citation : (2004) 138 STC 698

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; Sanjeev Johari, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—By way of this writ petition Under Article 226 of the Constitution, the petitioner, a private limited company engaged in the business of manufacturing marble slabs and tiles, seeks to quash the notice dated August 6, 2001 (Annexure 3) issued by the second respondent, i.e., Commercial Taxes Officer, Rajsamand, Under Sections 29, 58, 61 and 65 of the Rajasthan Sales Tax Act, 1994.

2. A test check of records for the period from. 1994-95 to December, 2000 of the Central Excise Department, Rajasthan, revealed that the manufacturing assessees have evaded payment of Central excise duty either by way of clandestine removals or under-valuation or otherwise and consequently, the demands aggregating to Rs. 2,719.27 lakhs (Rs. 27 crore odd) of Central excise duty have been confirmed by the adjudicating authorities of the department. It is also found that a sum of Rs. 6,819.80 lakhs (Rs. 68 crore odd) on account of under-valuation of goods escaped from charging sales tax. Out of 324 in 180 cases, an amount of Rs. 342.79 lakhs on account of Central excise duty has so far been recovered. In terms of section 75 of the Rajasthan Sales Tax Act, every dealer is required to keep and maintain a true and correct account showing the

value and quantity of goods received, manufactured, sold or otherwise disposed of or held in stock by him. Failure to do so, may lead to escaped assessment which, as per section 30 of the Act, is an assessment in which for any reason, the levy of tax has been escaped wholly or in part ; or wherein tax has been wholly or in part unassessed or underassessed in any way or under any circumstances. In such cases, where the Commissioner or a Deputy Commissioner (Administration) has reason to believe that an escapement has occurred, he may either direct the assessing authority to assess the tax or himself proceed to assess the same. Further, under the provisions of section 65 of the Act, if the dealer conceals any particulars from the return furnished by him or has deliberately furnished inaccurate particulars therein or has concealed any transaction of sale or purchase in his books of account or registers required to be maintained under the Act, he is liable to pay by way of penalty in addition to the tax payable by him, a sum not exceeding the amount of such tax. Thus, the assessees are liable to pay sales tax along with the penalty on the escaped turnover. The non-levy of tax has resulted into loss of crores of rupees. In this background, the impugned notice has been issued to the petitioner company. From the order of the Additional Commissioner, Central Excise, Jaipur, it has become apparent that the petitioner has been guilty of evasion of Central excise duty. There is prima facie material to show that petitioner has derived the profit from the unaccounted sale of marble and tiles. In view of these facts, the impugned show cause notice was given to the petitioner. The petitioner was required to explain the shortage of stock, which is tentatively assessed at Rs. 98,480.

3. It is contended by Mr. Vineet Kothari, learned counsel for the petitioner that additions cannot be made by the sales tax authorities by taking the shortage of stocks as profits of unaccounted sale by the petitioner assessee. The learned counsel has referred to the decisions of the apex court in P.C. Ittymathew & Sons v. Deputy Commissioner of Sales Tax (Law) reported in [2001] 1 STC 121 and Girdhari Lal Nannelal v. Sales Tax Commissioner reported in AIR 1977 SC 298a. It is also submitted that the survey report of the excise authority is wholly irrelevant material for issuing a notice for evasion of sales tax. In my view, the contention is not sustainable. I have gone through both the judgments of the apex Court, which have been filed along with the petition as annexures 1 and 2. In both the cases, a reply to the show cause notice was filed. It is only after the reply to the show cause notice is filed that the department is required to prove the evasion of tax. Prima facie, there is evidence for evasion of tax in huge sura. This Court will not be exercising its extra-ordinary jurisdiction under article 226 of the Constitution of India to help the tax evaders and not permit the tax authorities to probe into the tax evasion. If the petitioner-company, as a true citizen, has paid the sales tax, there should be no hesitation in submitting the explanation by way of reply to show cause notice instead of rushing to this Court. I have no hesitation in saying that interference by this Court at this stage under article 226 of the Constitution of India would be nothing but abuse of process of

the Court in the peculiar facts and circumstances of instant case. Thus, it is not a fit case to entertain this petition under article 226 of the Constitution of India.

4. Consequently, the writ petition is dismissed being devoid of merit.