(2002) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4183 of 1998

Mool Singh APPELLANT

Vs

Rajasthan Taxation Tribunal and Others RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan Sales Tax Act, 1954 — Section 79(1)

Citation : (2004) 138 STC 671

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

1. The instant writ petition Under Articles 226 and 227 of the Constitution of India has been filed seeking direction to quash the order dated October 26, 1998 passed by Rajasthan Taxation Tribunal, Jodhpur* (hereinafter referred to as "the Tribunal").

2. Petitioner Mool Singh was awarded a contract for collection of sales tax on "Bajri" at the check-post situated at Rani u/s 79(1) of the Rajasthan Sales Tax Act, 1994, for the period May 30, 1998 to May 29, 1999. Petitioner was served with notice dated June 3, 1998 calling upon him to explain as to why the amount collected in violation of the condition of the contract may not be forfeited. According to the A.O., assessee had collected the sales tax form M/s. Sanghvi Stone and M/s. Shiv Industries, Rani, at the rate of Rs. 24 per tractor passing from check-post. He was served with another communication dated June 3, 1998, whereby he was directed not to collect the sales tax from the registered dealers in view of the condition No. 21 of the contract. Petitioner submitted reply inter alia stating that he was only restrained from collecting the sales tax from the registered dealers carrying on the business of purchase and sale of "Bajri" as

such he rightly collected the tax from the dealers engaged in the business of manufacture of the marble and kota Stone, as they were carrying "Bajri" for the purpose of cutting and polishing the stones. The reply did not satisfy the assessing authority as such he called upon the petitioner to deposit proportionate monthly instalment of Rs. 14,625 under the communication dated July 30, 1998. The petitioner took up the matter to the Rajasthan Taxation Tribunal, Jodhpur, u/s 8 of the Rajasthan Taxation Tribunal Act, 1995 (hereinafter referred to as "the Act"). Before the Tribunal, fourth respondent, namely, Rani Stone Dealers'' Association was also impleaded as a party. The said association of stone dealers took the stand that they used "Bajri" as a raw material for carrying out cutting and polishing activities. The Tribunal by order dated October 26, 1998 (See page 672 supra) dismissed the appeal filed by the petitioner.

3. Assailing the order of the Tribunal, it is contended by Mr. Dinesh Mehta, learned counsel for the petitioner that the Tribunal has committed error in misinterpreting the clause 21 of the Act. He invited our attention towards English translation given in the judgment. It is submitted that the Tribunal has wrongly translated the word ^^O;olk;** as a dealer. According to Mr. Mehta, the term ^^O;olk;** means trade. Thus, according to the learned counsel, the petitioner-contractor was authorised to collect the tax from the persons engaged in business of purchasing and selling of "Bajri" for whatever use.

4. On the other hand, Mr. Sanjeev Johari, learned counsel for the department and Mr. Vineet Kothari, learned counsel for private respondent No. 4 have supported the judgment of the Tribunal. Both the learned counsel have raised preliminary objections as to maintainability of the writ petition. It is submitted that the question involved pertains to interpretation of clause 21 of the contract and it being the contractual matter, the writ petition cannot be entertained. It is also submitted that since the contract was only for the period from May 30, 1998 to May 29, 1999, the term has expired and hence, controversy remained academic. In our view, the first preliminary objection is not sustainable, as the instant writ petition is directed against the judgment of the Tribunal(See page 672 supra) Under Article 227 of the Constitution of India. We are only required to see, if there is error apparent on the face of the record of the judgment of the Tribunal.

5. After seeing the copy of the certificates of the registrations of some of the dealers, the learned Tribunal found that dealers are engaged in the business of purchase and sale of all kinds of stones, marbles, granites, cement, cement wares, building materials, etc. These goods are entered in the registration certificates as the goods dealt in and not as raw materials. "Bajri" is included as one of the building materials. A reference has also been made to the notification dated September 9, 1971, whereby there is an exemption from the tax on sale of building material. Thus, the "Bajri" is also being a building material, the dealers registered under the Act are exempted from payment of sales tax. Therefore, the collection of tax from the registered dealers of building materials in the auctioned

area by the contractor-petitioner would be unauthorised. In view of this, we do not find any illegality in the notice and the subsequent communication of the respondent-Commercial Taxes Officer, Sumerpur. There is no illegality in the order of Tribunal.

6. Consequently, we do not find merit in this writ petition. The same fails and is dismissed. There will be no order as to costs.

