(2013) 05 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7569 of 2011

M/s. J.K. Lakshmi Cement Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) 4 CDR 1890 : (2013) 4 RLW 3319 : (2014) 2 WLN 167

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Niraj Kumar Jain, for the Appellant; V.K. Mathur, Ankur Mathur and Ms. Garima Chouhan, for the Respondent

Judgement

Vineet Kothari, J.—This judgment governs disposal of the two writ petitions, since the controversy involved in these cases is common, and the facts of S.B. Civil Writ Petition No. 7569/2011- M/s. J.K. Lakshmi Cement Ltd. vs. State of Rajasthan & Ors., are illustratively taken for the said purpose. By the present writ petition, the petitioner, assessees/company has challenged the impugned assessment order dt. 30.03.2011 passed by C.T.O., Special Circle, Pali under the provisions of Rajasthan Tax on Entry of Motor Vehicles into Local Areas Act, 1988 (for brevity, hereinafter referred to as ''1988 Act'') read with relevant provisions of Rajasthan VAT Act, 2003, whereby the learned Assessing Authority imposed entry tax on the purchase and entry of Excavators (JCB) effected by the assessee-company during the relevant year 2008-09 from outside the State of Rajasthan in the local area @ 12.50% and imposed entry tax of Rs. 22,612/- and interest thereon of Rs. 6,7841- and in total demand of Rs. 29,396/- was raised against the petitioner under the impugned assessment order. The said order was rectified by the learned Assistant Commissioner, Special Circle, Pali vide it order dt. 20.06.2011 computing the tax @ 12.50% on the purchase value of Excavator of Rs. 18,08,980/-, which was wrongly mentioned as 22,612/-, and was increased to correct amount i.e. Rs. 2,26,123/- and interest was also increased from Rs. 6,784/- to Rs. 67,837/-, and thus total demand was raised at Rs.

2,64,564/- against the petitioner-company.

2. Though these orders were appealable before the Deputy Commissioner (Appeals) of the Commercial Tax Department, the present writ petition has been filed against these assessment orders directly before this Court under Article 226 of the Constitution of India.

3. Mr. Niraj Kumar Jain, learned counsel for the petitioner-assessee raised several contentions viz. firstly, that the earlier enactment in regard to imposition of tax on the entry of motor vehicle including the excavators, namely, the Rajasthan Tax on Entry of Motor Vehicles into Local Areas Act, 1988, which replaced the same Ordinance of 1988, should be deemed to have been repealed by the later enactment, namely, the Rajasthan Tax on Entry of Goods into Local Area Act, 1999 (for brevity, hereinafter referred to as ''1999 Act'') under which the petitioner-assessee/company had already paid the entry tax with respect to same excavators (JCB) purchased by the petitioner-company and brought into the local area, within the State of Rajasthan; and therefore, the second levy of entry tax on the same taxable event causing the entry of said motor vehicle, namely, Excavators (JCB) in to the State, could not be imposed by the Assessing Authority invoicing the provisions of the earlier enactment of 1988 Act, which though was the special law applicable to the entry of motor vehicles, whereas 1999 Act applied to all goods generally.

4. Secondly, Mr. Niraj Kumar Jain, relied upon the principle of disuse of legislation, which is known as ''doctrine of desuetude'', and relying upon the decision of Hon''ble Supreme Court in the case of Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd. and others, he submitted that the impugned assessment order could not have referred and relied upon the notification No. 729 namely S. No. 729: F. 4 (107) FD Gr. IV/87-66 dt. 16.09.1988, which referred to the rate of tax applicable to the motor vehicles under the provisions of Rajasthan Sales Tax Act, 1954 from time to time. He further argued that since the said notification was not saved and could not stand on the statute book with the repeal of the said Ordinance of 1988 upon being replaced by 1988 Act, as aforesaid. He also submitted that in any case the Assessing Authority could not ignore the specific contention raised in the reply filed to the show cause notice by the petitioner-company on 12.03.2010 (Annex. 8), in which, the factum of tax already paid by the petitioner @ 4% under the notification dt. 08.03.2006 issued under the later enactment of 1999 Act, and without giving any set off of the tax already paid by the petitioner-assessee under 1999 Act, the impugned assessment order could not be passed on such entry of motor vehicle in the State of Rajasthan under the old 1988 Act, He, therefore, urged that the impugned assessment order deserves to be quashed in writ jurisdiction under Article 226 of the Constitution of India.

5. Per contra, Mr. Ankur Mathur and Ms. Garima Chouhan, on behalf of Mr. V.K. Mathur, learned counsel for the Revenue, vehemently opposed this writ petition and urged that not only against the impugned assessment order dt. 30.03.2011

and the rectification order dt. 20.06.2011, the petitioner-assessee has an alternative remedy by way of appeal, which lies before the Deputy Commissioner (Appeals), constituted under the provisions of Rajasthan Sales Tax Act, 1954 as replaced by the Rajasthan Sales Tax Act 1994, as also, replaced now by the Rajasthan VAT Act, 2003, which provisions was referred to and mutatis-mutandis applied in the provisions of 1988 Act itself, which was the special law, applicable to the entry of motor vehicles within the State of Rajasthan; and therefore, the writ petition of this Court cannot be invoked by the petitioner-assessee. They also submitted that the doctrine of desuetude as contended by the learned counsel for the petitioner-assessee does not apply in the facts of the present case and both the enactments are very much alive and exist on the statute book even today.

6. They further submitted that both these Acts, namely, 1988 Act and 1999 Act, operate in different fields and have different purposes and, therefore, the assessment order cannot be quashed on this ground alone. In support of above contentions, they relied upon the decisions of Hon''ble Supreme Court in the case of State of Maharashtra Vs. Narayan Shamrao Puranik and Others, and another decision in the case of Cantonment Board, Mhow and Another Vs. M.P. State Road Transport Corpn., . They further contended that while the old Rajasthan Tax on Entry of Motor Vehicles into Local Areas Act, 1988, was a special law, covering the entry of motor vehicles into the State; where as the Rajasthan Tax on Entry of Goods into Local Area Act, 1999, was a general law applicable to the other commodities for levy and collection of tax on the entry of goods into the local area of the State for consumption, use and sale therein; and therefore, the case of the present petitioner-assessee would be very much governed by the provisions of 1988 Act and not by the provisions of 1999 Act. Learned counsel for the Revenue, however, could not controvert the submission of the learned counsel for the petitioner to the extent of notification dt. 08.03.2006 issued under the provisions of 1998 Act, which under Entry No. 9 and Entry No. 37 also impose entry tax on entry of motor vehicles in the State.

7. I have heard the learned counsel for the parties at length and given my thoughtful consideration to the rival submissions of the learned counsels, and carefully perused the record of the case including the case-laws cited at the bar.

8. There appears to be, prima-facie, some confusion and overlapping of levy of entry tax on same taxable event, namely, entry of goods into the local areas for consumption, use and sale therein under these two enactments having their source to Entry 52 of list second of the Seventh Schedule of the Constitution of India. In the present case, as far as the commodity, the motor vehicles in question are concerned, which beyond doubt covers Excavators (JCB) also involved in the present case. While true it is that the special law applicable to the motor vehicles is covered by the provisions of 1988 Act and the notification issued there-under on 16.09.1988; the 1999 Act a subsequent legislation, is general in nature and covers all such goods, whose entries is effected in the local

area of the State at Rajasthan for use, consumption or sale therein. While the later 1999 Act does not specifically talk about the motor vehicles, the subordinate or delegated legislation in the form of notification dt. 08.03.2006, specifically mentioned levy of entry tax on the motor vehicles under Entry Nos. 9 and 37 of that notification, which is reproduced hereunder for ready reference:

FINANCE DEPARTMENT

TAX DIVISION

NOTIFICATION

Jaipur, March, 08, 2006

S.O. No. 424.-In exercise of the powers conferred by sub-section (1) of Section 3 of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (Rajasthan Act No. 13 of 1999), and in supersession of this Department''s Notification No. F12(2) FD/Tax/2005-210, dt. 24.03.2005 (as amended from time to time), the State Government specifies that the tax payable by a dealer under the said Act in respect of the goods specified in Column 2 of the List given below, and brought into an local areas, for consumption, or use or sale therein, shall be payable at such rate as has been shown against them in Column 3 of the said List, with immediate effect.

By Order of the Governor,

Sd/(Subir Kumar)

Deputy Secretary to Government.

9. It is also not in dispute before this Court in the present case that for the same taxable event taking place in the matter, namely, the entry of Excavators (JCB) upon purchase by the petitioner-assessee effected during the relevant period of 2008-09, the assessee/company under Entry No. 37 of the Notification dt. 08.03.2006, under the order dt. 21.01.2011 passed by the Division Bench of this Court while deciding a batch of 402 writ petitions, had already deposited 50% of the disputed demand of tax at the rate of 4% the purchase value. The relevant and operative portion of the order dt. 21.01.2011 passed in DBCWP No. 10230/2010- M/s. Mahesh Edible Oil Industries Ltd. vs. State & Ors., is quoted herein below:--

With the view to balance the equity while passing interim orders and more particularly in fiscal matters it is necessary that the interest of the assessees as well as that of the Revenue may be balanced equally. Grant of absolute stay order staying the recovery on furnishing of bank guarantees does not serve either the parties or the State. Even assuming that there is a prima facie case in favour of assessed-petitioners the two other relevant considerations of balance of convenience and irreparable loss must also be taken into account. In that view of the matter it is directed that recovery of tax in pursuance of assessment orders and demand notices where they have been issued in the case of such petitioners shall remain stayed on the condition of the petitioners depositing 50% of the assessed tax excluding any amount of penalty and/or interest imposed by the assessing authority. The deposit be made within a period of six weeks from today.

It is further made clear that for the balance amount of 50% of tax and the amount of penalty or interest imposed by the assessing authority in the assessment order is concerned, the assess shall furnish a solvent security or the security as provided under the Act for the said amount within a period of six weeks to the satisfaction of the assessing authority. Both these conditions of deposit and furnishing security shall be complied with within six weeks, failing which this order shall stand vacated automatically.

In the event if the writ petition succeeds the petitioner shall be entitled to refund of amount of the tax deposited by the assessee or where the entire amount with interest 12% per annum and in the event the petition fails, the assessee shall be liable to pay the balance of tax plus penalty with interest 12% per annum and where assessments have not been made so far, the respondents may proceed to finalise the same and the assessment orders/demand notices being issued, the petitioners'' case shall be covered by the aforesaid order.

The stay application in all the writ petitions accordingly stand disposed of earlier orders passed shall stand modified in the light of this order.

Let a photostat copy of this order be placed in each file.

In view of the aforesaid interim order passed by the Jaipur Bench, the interim orders passed in these matters deserves to be modified and accordingly, we modify the interim orders passed in these matters and pass the same interim orders as passed by Jaipur Bench of this Court in D.B. Civil Writ Petition No. 13765/2010; M/s. Ramgopal Satyanarain vs. State of Rajasthan & Ors. & 264 other connected case (supra), which shall continue during the pendency of the writ petitions.

The stay applications stand disposed of accordingly.

A photostat copy of the order be placed in each of the aforesaid files.

Sd/-

(Prakash Tatia), J.

Sd/-

(Arun Mishra), C.J.

10. The other contention raised by the learned counsel for the petitioner, Mr. Niraj K. Jain, about the provisions of 1988 Act, becoming otiose and inoperative on the basis of doctrine of desuetude, cannot be accepted and the said contention has no merit. Firstly, the notification dt. 16.09.1988 under which the impugned assessment order has been passed by the Assessing Authority on 30.03.2011 itself, was saved with the enactment of the Ordinance 1988 with the

following Section 9 in the 1988 Act. Section 9 of the 1988 Act provides for repeal and savings. For the purposes of ready reference, Section 9 of 1988 Act is quoted herein under for ready reference:--

9. Repeal and Savings:--

(1) The Rajasthan Tax on Entry of Motor Vehicles into Local Areas Ordinance, 1988 (Ordinance No. 11 of 1988) is hereby repealed.

(2) Notwithstanding such repeal all things done, actions taken or orders made under the said Ordinance shall be deemed to have been done, taken or made under this Act.

11. Thus, as per sub-section (2) of Section 9 of 1988 Act, the notification No. 729 dt. 16.09.1988, issued when the Ordinance 1988 was in force, was saved and which still holds the field. The said notification dt. 16.09.1988 is also quoted hereunder for ready reference:--

S. No. 729: F. 4 (107) FD Gr. IV/87-66 dt. 16.9.1988

S.O. 139.--In exercise of the powers conferred by S. 3 Rajasthan Tax on Entry of Motor Vehicles into Local Areas Ordinance, 1988, the State Govt. hereby notifies that the rate of tax payable under the said section on motor vehicles shall be the rates as notified by the State Govt. on such motor vehicles under Sec. 5, RST Act, 1954 front time to time.

12. On the doctrine of desuetude, recently the Hon''ble Supreme Court in the case of Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others, reiterated the principle and explained the doctrine of desuetude in the following terms:

The rule concerning desuetude has always met with general disfavour. It was also held that a statute can be abrogated only by express or implied repeal; it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. The essentials of the doctrine of desuetude may be summarised as follows:

(i) The doctrine desuetude denotes a principle of quasi-repeal but this doctrine is ordinarily seen with disfavour.

(ii) Although the doctrine of desuetude has been made applicable in India on few occasions but for its applicability two factors, namely, (i) that the statute or legislation has not been in operation for a very considerable period, and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of any one of them would not attract the doctrine of desuetude. In other words, a mere neglect of a statute or legislation over a period of time is no sufficient but it must be firmly established that no only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerably long period.

13. Since, the earlier two judgments relied upon by the learned counsel for the respondents, have already been discussed in the aforesaid judgment, and the principles laid down in that need not be separately discussed here. This Court is satisfied that the said doctrine cannot be invoked so as to imply any repeal of 1988 Act in the present case as neither the twin conditions for so assuming have been established in the present case by the petitioner but on the contrary, various assessments for imposition of the entry tax on the motor vehicles, have been made by the respondents-authorities from time to time. In such circumstance, neither the long period of disuse, nor the repeal of the same by later enactment imply or specially has been established, therefore, invoking of the said doctrine in the present case is not at all called for. The said contention of the learned counsel for the petitioner, therefore, deserves to be rejected and the same is hereby rejected.

14. The ''doctrine of desuetude'' also would not apply in the facts of the present case as neither a very long period of disuse of the said 1988 Act has been established by the petitioner nor the new enactment of 1999 Act seems to be overlapping the field occupied and covered by the earlier enactment of 1988 Act. Both these Act have been enacted for different purposes and operate in different fields and both emanate and have their legislative source of power under Entry 52 of the List II of 7th Schedule of the Constitution of India. Therefore, this contention is liable to be rejected, the same is, accordingly rejected.

15. In order to appreciate the controversy involved in the matter, it will be useful to refer the necessary provisions of the 1988 Act and the Statement of Object and Reasons of 1988 Act. The Statement of Objects and Reasons given in the Bill of 1988 gives an insight into the purpose for which the said 1988 Act has been enacted. The Statement of Objects and Reasons of 1988 Act as reproduced by. Division Bench of this Court in the case of Rashid Mohd. vs. State of Rajasthan, AIR 1994 Rajasthan 167 while upholding the vires of the Act of 1988 are as under:--

From 1984 onwards some States and Union Territories have reduced the rates of Sales Tax on motor vehicles and chasis substantially. Such reduction in tax rates by the neighbouring States has resulted in diversion of trade to those areas and consequent loss of legitimate Sales Tax revenue to the State of Rajasthan. With a view to compensate such loss of legitimate Sales Tax revenue, the State Government has decided to levy a tax on the entry of such of the motor vehicles which are purchased outside the State and brought in the State of Rajasthan for use or sale therein and are liable to be registered under the Motor Vehicles Act, 1939 (Central Act 4 of 1939). No tax has been levied on such of the motor vehicles which are registered in any other State or Union Territory for a period of 15 months or more before the date on which they are liable to be registered in this State. The tax liability has been reduced to the extent of the amount already paid under the law relating to general Sales Tax in any other State of Union Territory by any importer not being a dealer for his own use.

16. Now let us have a look at the Statement of Objects and Reasons to Bill passed into Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 which reads as under (Bill No. 8 of 1999 published in Rajasthan Gazette on 27.03.1999):

STATEMENT OF OBJECTS AND REASONS

In order to argument the revenues of the State and to enable it to meet the increased requirements of development in rural and urban areas, additional resources are required to be generated.

The States of Madhya Pradesh & Karnataka have enforced entry tax with the help of the sales tax department during last seventy years or so.

Entry 52 in the State List of the Seventh Schedule of the Constitution of India empowers the State Government to legislate on the matters relating to entry of goods in local areas. ''Local areas'' means municipal, panchayat, cantonment or notified areas.

The various provisions of the Act will be enforced by the Commercial Taxes Department of Rajasthan. Provisions have also been incorporated for appeal to the Rajasthan Tax Board and the Rajasthan High Court.

It is also sought to enable the State Government to make rules to carry out provisions of the proposed Act. The Schedules indicating rate of tax and list of exempted goods will be notified. However, a provision has been incorporated vide Clause (3) of the Bill that the rate of entry tax shall not exceed ten percent of the value of goods.

All the dealers with a turnover in taxable goods exceeding Rs. one lac shall be required to be registered as dealers. They shall be required to file returns indicating details of the taxable goods brought in or caused to be brought in a particular local area. The assessing authorities as notified by the State Government will assess the dealers and the latter will be required to deposit entry tax on a regular basis. Provisions are also being incorporated for summary assessment and payment of tax in advance. The State Government will have powers to exempt or reduce tax along with interest in cases where it seems appropriate. It will be mandatory on the part of the dealers to maintain accounts and issues sale bill, memo or invoices. The officers of the Commercial Taxes Department will have powers to enter the premises and inspect and seize the documents, if required, in connection with the provisions of the Act.

This Bill seeks to achieve the aforesaid objectives.

Hence, the Bill.

17. Now coming to the objection of the learned counsel for the respondents, Mr. Mathur, about the maintainability of the writ petition in view of the availability of alternative remedy by way of appeal before the Dy. Commissioner (Appeals) or the Tax Board against the impugned assessment order is concerned, this Court is

of the opinion that though such an efficacious alternative remedy is available to the petitioner and the petitioner-assessee ought to have preferred the appeal only against the impugned assessment order, but since certain important questions of law of interpretation of two applicable laws have been raised by the learned counsel for the petitioner, it was considered appropriate to interpret the two applicable laws for the benefit of assessee as well as the departmental authorities here in the present writ petition, lest the multiplicity of litigation at various forums occurs. Therefore, to the extent of interpretation of laws and questions of law concerned only, the following observations are made by this Court.

18. Even though it is held that to the extent of present case, the provisions of 1988 Act would be more appropriately applicable to the facts of the present case, since the taxable event is in the form of entry of motor vehicle, which includes Excavators (JCB) as well, which has been effected by the individual petitioner-assessee and the provisions of the later enactment of 1999 Act, which is applicable to all goods generally and thus being a general law, for effecting the entry of goods in the local area, that Act would not be applicable to the entry of motor vehicles by individual assessees within the State for their own use, consumption and sale therein. However, the overlapping or the confusion appears to have been created by the subordinate and delegated legislation of the State by including the Entry Nos. 9 and 37 in the notification dt. 08.03.2006 issued under the provisions of general law i.e. 1999 Act with respect to motor vehicles, which might apply to the dealers of motor vehicles who deals with such motor vehicles as stock of trade or goods, but it appears that due to inadvertent overlapping of such entries by the subordinate or delegated authority concerned, this appears to have created some confusion with the Assessing Authorities as to what rate of entry tax has to be imposed and under which enactment on the entry of motor vehicles in the State of Rajasthan. While rate of entry tax under Entry No. 9 is 1%, under Entry No. 127, it is 4% under the Notification dt. 08.03.2006 under 1999 Act, whereas under the notification dt. 16.09.1988, issued under Ordinance 1988 as saved under 1988 Act it was 12.50% with reference to rate prescribed on sale under RST Act, 1954/RST Act, 1994 or Rajasthan VAT Act, 2003; and that is why the impugned assessment order was passed on 30.03.2011 to levy higher rate of tax @ 12.50% upon the assessee.

19. It may be pointed out that the entry tax itself is imposed u/s 52 of List II of the 7th Schedule of the Constitution of India while 1988 Act was enacted and compensate the State for loss sales tax due to diversion of trade to other States. The later 1999 Act was enacted to raise revenue for development in rural and urban areas as would be evident from the Statement of Objects & Reasons of two enactments, quoted above. There is no doubt that these two enactments of 1988 Act and 1999 Act operate in different fields and both have different purposes and are very much existing and alive laws on the statute book even now and the 1988 Act is neither dead letter of law, nor can be deemed to be a dead law invoking the doctrine of desuetude as contended by the learned counsel

for the petitioner. The only confusion or overlapping, which has been caused by the aforesaid delegated legislation in the form of notification dt. 08.03.2006 to the extent of Entry Nos. 9 and 37 relating to motor vehicles without clarifying about its applicability to the dealers of motor vehicles and not the individual assessees who cause entry of motor vehicle for their own use or consumption like the present assessee-petitioner, which is required to be cleared. Obviously, it is for the State only to undertake such exercise of clearing the aforesaid doubt.

20. In law, however, if the entry tax has been imposed by the Assessing Authority upon the present assessee on the entry of the motor vehicle in the State under 1999 Act, under the aforesaid notification dt. 08.03.2006, the said entry tax already paid by the assessee or imposed upon him has to be set off against the entry tax payable as per the provisions of 1988 Act under special law, to be applied for imposition of same entry tax for same taxable event under the old 1988 Act. From the perusal of the impugned assessment order dt. 30.03.2011, it does not appear that this contention of the assessee has been even met by the Assessing Authority in any manner and the Assessing Authority has simply chosen to remain silent on this aspect of the matter.

21. Therefore, while expecting from the State Government including its subordinate authority of the Taxation Department to clarify this position at their own end, this Court considers it appropriate to dispose of this will petition by relegating the petitioner-company back to the appellate forum under the Act with a direction that the taxation authorities within the State under the said enactments will give the set off of the entry tax already paid by the petitioner-assessee under 1999 Act against the demand of such entry tax raised under the 1988 Act applicable to them for effecting the entry of motor vehicles within the State of Rajasthan chargeable to the entry tax under the provisions of Rajasthan Tax on Entry of Motor Vehicles into Local Area Act, 1988, and the appellate authorities are directed to entertain such appeals filed by the writ-petitioners without objection of limitation, if such appeals are even now filed by the petitioner/s-assessee/s within one month from today and decide the same on merits. With these observations and directions, the writ petitions filed by the petitioner/s are disposed of. No costs. A copy of this order be sent to the concerned parties and also the Chief Secretary & Finance Secretary of the State Government and Commissioner, Commercial Taxes Department for needful forthwith.

