(2011) 11 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 296 of 2011

M/s Miracle Foils (P) Ltd. APPELLANT

Vs

CTO, Special Circle Pali RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (2011) 11 RAJ CK 0071

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas

1. In all the above revision petitions preferred by the assessees, common question of law is involved, therefore, all these sales tax revisions are heard and decided together by this common order. For the sake of convenience, facts of S.B. Sales Tax Revision Petition No.296/2011 are taken into consideration.

2. After marathon of litigation with regard to the controversy whether Aluminium foil falling in word "sheets", therefore, covered under the notification dated 31.12.1975 and, further, whether the notification dated 13.06.1985 issued by the Revenue is applicable for the purpose of granting exemption for five years commencing from 13.06.1985, the day on which the notification was issued by the Revenue.

3. Before entering into the merit of the case, it is appropriate to observe that after marathon of litigation, the co-ordinate Bench of this Court delivered a judgment on 08.01.2007 in S.B. Civil Sales Tax Revision No.1274/2002 and other revisions which is reported in 116 Tax Update 17 Pt. 3. In that judgment, orders passed by the Tax Board dated 08.02.1999, 27.02.2002 and 15.06.2002 were under challenge. The co-ordinate Bench remitted the matter to the Tax Board vide aforesaid judgment and following directions were given for deciding the

controversy involved in this case :

In these facts and circumstances, it appears that the very foundation of the order dated 8.2.1999 is the additional evidence produced by the assessee and the pleas taken by the assessee on the basis of those documents and the Tax Board relied upon those documents without affording an opportunity of hearing to the revenue nor gave any opportunity to the revenue to produce evidence to rebut the documentary evidence by the assessee and the Tax Board''s order dated 8.2.1999 is based on the evidence produced by the assessee, therefore, only on this ground alone, the order of the Tax Board dated 8.2.1999 deserves to be set aside in the revisions preferred by the revenue to challenge the impugned orders passed in final assessment proceedings for the years 1982 to 1986.

When facts are glaring and are apparent from the record of the Tax Board, the revenue cannot be denied opportunity to meet with the evidence produced by the assessee at the back of revenue and, therefore, in the peculiar facts of the case, it cannot be held that the department consciously waived objection about consideration of additional evidence produced by the assessee before the Tax Board while deciding appeals no.8 to 11/1995 by judgment/order dated 8.2.1999 merely because the revenue failed to take objection in the memo of revision petition. Even if the department was not vigilant in looking into the record of the Tax Board, then also for this, the department cannot be denied opportunity to meet with the evidence produced by the assessee at the back of revenue. Therefore, the question of law no.9 is decided against the assessee and the question of law no.8 is decided in favour of the revenue.

At this juncture, it will be appropriate to observe that though the assessee produced additional evidence before the Tax Board in second appeal but the Tax Board held those documents relevant for the purpose of deciding the controversy involved in these matters. Therefore, it will be appropriate to allow the assessee to rely upon the documents which it has submitted before the Tax Board in above four appeals and the ends of justice can be met if the revenue is granted opportunity to meet with this evidence.

In view of the above, all these revision petitions deserve to be allowed, hence, allowed. The order dated 8.2.1999 is set aside and consequently, all the impugned orders passed by the Tax Board following the reasons given in the order dated 8.2.1999 and which are impugned in these revisions are set aside.

The matter is remanded back to the Tax Board to decide all the appeals including the appeals decided by the order dated 8.2.1999 afresh in accordance with law and after considering the evidence which may be produced by the revenue in rebuttal to the evidence produced by the assessee before the Tax Board.

Since this Court held that the order dated 8.2.1999 has been passed with material illegality and irregularity, therefore, the appeals which were decided by the order dated 8.2.1999 shall also stand revived by this order and the Tax Board may consider the evidence in those revisions after affording opportunity to the revenue to rebut the evidence. Both the parties are directed to appear before the Tax Board on 19.2.2007.

4. After remand by the co-ordinate Bench of this Court, the Rajasthan Tax Board finally decided the controversy vide the impugned judgment dated 31.12.2009 and held that Aluminium foil is not included in the non-ferrous sheets notified in the notification dated 31.12.1975, therefore, inter-state sales tax is required to be paid at the rate of 4% instead of at the concessional rate of 1% because the Aluminium foil does not fall in any of the categories enumerated in the notification dated 31.12.1975.

5. In this revision petition, the assessee is challenging the validity of the judgment rendered by the Tax Board on remand dated 31.12.2009 on various grounds.

6. All the assessees are manufacturers of Aluminium foil and they are claiming that Aluminium foil falls under the word "sheets", therefore, the same is covered under the notification dated 31.12.1975 and petitioner assessees are liable to pay concessional rate of tax at 1%.

7. To substantiate the claim, learned counsel for the petitioners submits that the Tax Board has committed a serious error while holding that the assess is required to pay 4% tax upon their product known as Aluminium foil whereas it is Aluminium sheets, therefore, covered under the notification dated 31.12.1975. Learned counsel for the petitioners submits that in its earlier judgment the Tax Board held that Aluminium foil falls under the category of "sheets" but, after remand, the matter has been decided afresh by the Tax Board in which it is erroneously held that Aluminium foil cannot be included in Aluminium "sheets". The said finding of the Tax Board is totally contrary to the facts and grounds taken by the petitioner assessees before the Tax Board. Upon perusal of the judgment impugned it will reveal that learned Tax Board without application of mind held that Aluminium foil does not fall in the category of non-ferrous sheets and hence in not included in the entry provided in the notification dated 31.12.1975. The Tax Board has completely ignored the fact that mere change in the shape by pressing does not change the commodity and the commodity continues to hold its essential characteristics.

8. Further, it is argued that the Legislature nowhere intended to give restrictive meaning to the entry in the notification dated 31.12.1975. Moreover, in that notification all the non-ferrous metals and all kinds of non-ferrous sheets were included but this fact has not been considered properly that Aluminium foil is nothing but a thin sheet which is well inclusive in the word non-ferrous sheet given in all the entries of the notification dated 31.12.1975.

9. Learned counsel for the petitioners vehemently contended that the Revenue has right to levy sales tax from the petitioners'' firms under the notification dated 31.12.1975 because Aluminium foil is included under all the non-ferrous metals, therefore, the finding given by the Tax Board that Aluminium foil is not covered

under the notification dated 31.12.1975 because the process of manufacture is bound to undergo transformation with the advancement of science and technology and by reason of the technology the name of the end product may change but the basic nature and quality of the product still remains the same. Mere act of pressing and thinning of the non-ferrous sheets does not bring into existence a new commodity. The process involved in making the Aluminium foil is not manufacture, therefore, the word "sheet" used in the notification dated 31.12.1975 covers all kinds and types of sheets. Further, it is submitted that the Revenue failed to adduce any evidence to discharge their burden to establish that Aluminium foil is not a non-ferrous sheet and is a different and distinct commodity, therefore, the impugned judgment deserves to be quashed.

10. Learned counsel for the petitioner submits that the Tax Board has committed serious error while ignoring the fact that the entry non-ferrous rods, pipes, strips, section, sheets, circles and tubings takes in it even thinner forms of non-ferrous sheets known as Aluminium foil. The word "sheets" is used in plural and generic sense, therefore, every conceivable type of sheet shall be covered by the said entry because the entry non-ferrous sheets as long as the commodity retains its essential characteristics and does not lose its essential character of a non-ferrous sheet, therefore, it cannot be treated new and distinct commodity for the reason that it continues to retain the same characteristics and identity of non-ferrous sheets. Therefore, the contrary interpretation given by the Tax Board deserves to be quashed.

11. The contention of the assessee is that the term "sheets" in the entry of the notification dated 31.12.1975 used by the Legislature is not denominative of the commodities and is to be understood according to the common commercial understanding and not in scientific terms, therefore, the Tax Board committed an error while holding that the petitioner''s commodity Aluminium foil can be used only as a packing material despite its varying uses. The Tax Board has failed to apply the common parlance test in determining the user test. The nature of the goods cannot be determined by the test of use to which they are capable of being put to. The particular use to which the article can be applied in the hands of the special consumer is not determined by the nature of the goods. Earlier, in its judgment dated 08.02.1999, learned Tax Board considered that Aluminium foil has varied uses other than packing material but, now, after remand it has wrongly been held that it is packing material. The Aluminium foil is nothing but a specie of non-ferrous sheets, therefore, the learned Tax Board has wrongly held that due to change in the thickness the sheet becomes a distinct commodity and is not included in the notification dated 31.12.1975. The names "Aluminium foil", "Aluminium sheets", "Aluminium foil sheets" and "Aluminium foil paper/polythene backed" has been used in the bills/invoices produced by the Department instead of non-ferrous sheets or sheets cannot be the decisive factor to determine the character of the commodity. The name of the end product may by reason of technological processes change but the basic nature and quality of the product remains same, therefore, the Tax Board should have applied common parlance

test instead of holding that since the petitioner has used the above terms and names in its bills instead of non-ferrous sheets, therefore, Aluminium foil is separate and distinct commodity than Aluminium sheets.

12. The basic argument of learned counsel for the petitioner is that Aluminium foil is non-ferrous sheets and as per notification dated 31.12.1975 the assessee is required to pay 1% sales tax because the Aluminium foil is non-ferrous sheet as enumerated in the notification dated 31.12.1975.

13. For issuance of the subsequent notification dated 13.06.1985 by the State Government u/s 8(5) of the Central Sales Tax Act, in which, the rate of tax at 1% upon inter-statal sale for a period of 5 years, it is submitted by learned counsel for the petitioner that the same cannot apply in the present facts and circumstances, therefore, the Department cannot agitate that prior to notification dated 13.06.1985 Aluminium foil did not fall under notification dated 31.12.1975. Contention of the learned counsel for the petitioner is based upon the reason that as per preamble clause of notification dated 13.06.1985 it appears that it has not been issued in supersession of the earlier notification dated 31.12.1975. It is contended that the notification dated 31.12.1975 covers all types of sheets and forms including Aluminium foil within its ambit whereas issuance of the subsequent notification dated 13.06.1985 being specific in nature did not debar the petitioner assessee to take benefit under notification dated 31.12.1975 because the word "sheets" in the entry provided in notification dated 31.12.1975 is wide enough to cover Aluminium foil and Almuminum sheet and there is no reason to confine its scope and ambit to a restricted field.

14. It is contended by learned counsel for the petitioner that the use of the word "sheets" is generic in sense which indicates that all types of sheets were intended to be covered in the said expression because sheet is genus and foil is a specie thereof. Therefore, sheets of particular thickness are known as foil but for that matter the foil would not fall outside the general description. It is vehemently argued that Aluminium foil is to be considered as integral part of the Aluminium sheet and not different and distinct therefrom, therefore, the finding of the learned Tax Board with regard to holding that Aluminium foil is different commodity distinct from non-ferrous sheets is erroneous because the process of laminating and thinning/pressing of non-ferrous sheets to make Aluminium foil does not change the substantial identity, character and essential nature and it cannot be termed as manufacturing, therefore, the finding given by the Tax Board deserves to be quashed.

15. As per learned counsel for the petitioner, the Revenue has failed to discharge their burden by not adducing any cogent evidence in rebuttal to the evidence produced by the assessee, therefore, only on presumption of the Tax Board it cannot be said that Aluminium foil does not fall under the entry of the notification dated 31.12.1975. It is argued by learned counsel for the petitioner that the nomenclature of the commodity is not determinative of the nature of the goods.

16. While inviting attention of the Court towards dictionary meaning of the word "sheet" as per Webster''s New International Dictionary, Chambers Twentieth Century Dictionary and Oxford English Dictionary, it is submitted that Tax Board has ignored the various dictionary meaning of the commodity "foil" and "sheet" which were earlier considered by the Tax Board in detail vide judgment dated 08.02.1999. The crux of argument of learned counsel for the petitioner is that Aluminium foil is included in the entry of Aluminium sheet and words "non-ferrous sheets" in common parlance and as per the dictionary meaning; and, further, for the reason that after following the process although the nomenclature becomes changed known as Aluminium foil but, in fact, it does not change its character, therefore, the finding of the Tax Board deserves to be quashed.

17. Learned counsel for the petitioner invited attention of the Court towards number of judgments to substantiate his arguments. Following judgments are relied upon by learned counsel for the petitioner :

"Aluminum Foil is thin "sheet" :

1. 19 STC 24 (SC) State of Gujarat v. Sakarwala Brothers

2. State of Gujarat Vs. Shah Veljibhai Motichand, Lunawada,

3. Indian Carbon Limited Vs. Superintendent of Taxes, Gauhati and Others,

4. The State of Andhra Pradesh Vs. Sri Durga Hardware Stores and Another,

5. Commissioner of Sales Tax Vs. Voltas Ltd.,

6. Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another,

7. Super Diamond Tools Vs. The State of Gujarat,

8. 1978 Tax LR 2129 (Allahabad High Court) M/s Khanna Loke Ind, Moradabad v. Asstt. Comm. (Jud) Sales Tax

9. Mansatta Industries Pvt. Ltd. Vs. The State of Gujarat,

10. Indian Aluminium Cables Ltd. Vs. Union of India and Others,

11. Commercial Taxes Officer Vs. Sakariya Textiles,

12. Asian Paints India Ltd. Vs. Collector of Central Excise,

13. 1989 (6) RTJS 143 (Rajasthan High Court) L.T.O. Circle D, Jaipur v. M/s Pooranmal Jagdish Prasad

14. Gujarat Steel Tubes Ltd. etc. Vs. State of Kerela and others,

15. M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat,

16. 1991 Suppl. (1) 125 (SC) Indian Metal & Ferro Alloys Ltd. v. Collector of Central Excise

17. 91 STC 195 (Madras High Court) State of Tamilnadu v. Hajee P. Sued Mohd.

18. 106 STC 286 (MP High Court) Vora Wires v. Comm. Of Sales Tax

19. Union of India and others Vs. Garware Nylons Ltd. etc.,

20. State of Kerala and Another Vs. Namputhiris Pickle Industries,

21. Metlex (I) Pvt. Ltd. Vs. Commissioner of C. Ex., New Delhi,

22. 2006 (6) RC 403 (SC) Hindustan Poles Corporation v. Comm. of Central Excise

23. 2006 (6) RC 508 (SC) HPL Chemical Ltd. v. Comm. of Central Excise.

Common Parlance Test :

1. Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others, Others

2. Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others,

3. Mukesh Kumar Aggarwal and Co. Vs. State of Madhya Pradesh and Others,

4. 88 STC 430 (Madras High Court) State of Tamilnadu v. Vinyl Lable Industries

5. 98 STC 224 (Bombay High Court) Commissioner of Sales Tax, Maharashtra, Bombay v. Shri Iron & Metal Works

18. Learned counsel for the petitioner heavily relied upon the judgment rendered by the Excise and Taxation Commissioner Vs. Print-O-Pack, , and submits that the judgment impugned may be quashed and set aside.

19. Per contra, learned counsel appearing on behalf of the Revenue submits that the finding given by the Tax Board does not require any interference because all the grounds taken by the petitioner were considered objectively and, thereafter, finding has been given by the Tax Board that the petitioner''s commodity which is Aluminium foil does not fall in any of the entry notified vide notification dated 31.12.1975. Further, it is submitted that in the year 1985 only for five years exemption was granted for levying tax at the rate of 1% vide notification dated 13.06.1985, in which, it was specifically mentioned that with immediate effect the tax payable under sub-section (1) of the said section by any dealer, having his place of business in the State, in respect of the sale by him from any such place of business in the course of inter-state trade of aluminium foils shall be calculated at the reduced rate of 1%; meaning thereby, vide notification dated 13.06.1985 exemption was granted for five years only and except for the said period of five years the assessee is required to pay tax at the rate of 4% which is general rate of tax upon the said commodity. A plain reading of notification dated 13.06.1985 reveals that purposely the said notification was issued for granting some exemption for the business in the State in respect of sale of inter-state trade of Aluminium foil for five years, in which, 1% rate was to be levied which

was not included in the notification dated 31.12.1975. Therefore, the issuance of the notification dated 13.06.1985 itself speaks that the petitioner''s commodity is not covered under the notification dated 31.12.1975.

20. It is further submitted by learned counsel for the respondent that all the technical grounds of the assessee were objectively considered by the Tax Board and it is rightly held that purposely the words "Aluminium foil" was not used in the notification dated 31.12.1975, therefore, the said commodity does not fall in the entry of the said notification and this finding of the Tax Board is further supported from the fact that in the year 1985 another notification was issued purposely for granting exemption upon Aluminium foil for five years, therefore, the Legislature has expressly given the intention for levying tax upon Aluminium foil and as such the finding of the Tax Board does not require any interference.

21. Learned counsel for the Revenue invited my attention towards certain judgments reported in, AIR 1981 SC 146 , M/s. Pappu Sweets and Biscuits Vs. Commissioner of Trade Tax U.P Lucknow, and submits that this unnecessary litigation is going on for last many many years and after remanding of the matter by this Court the Tax Board thoroughly examined the entire grounds advanced by the assessee and, ultimately, found that Aluminium foil is not included in any of the entries of the notification dated 31.12.1975, therefore, the assessee cannot claim to pay sales tax at the rate of only 1% on his own interpretation and he is required to pay 4% sales tax upon the commodity in question.

22. After hearing learned counsel for the parties, I have perused the entire record of the case.

23. It appears that for last many years the controversy is going on, therefore, it is proper to finally adjudicate the controversy whether the Tax Board has rightly given the finding that Aluminium foil does not fall in the word "sheets" as provided in the notification dated 31.12.1975.

24. The core question involved in the present revision petitions is that whether Aluminium foil falls in the word "sheets" covered by the notification dated 31.12.1975 and petitioner assessee is liable to pay tax at the concessional rate of 1% or the separate notification dated 13.06.1985 will apply for the purpose of levy of tax upon the "Aluminium foil".

25. For adjudicating the controversy in question, the intention of the Legislature is required to be seen because purposely the legislature has not included the commodity "Aluminium foil" in the notification dated 31.12.1975 at the time of granting exemption, then, obviously on the basis of interpretation the assessee is claiming that he is liable to pay 1% tax for sale of Aluminium foil which is based upon his own interpretation. In this case, although number of grounds have been taken by the petitioner assessee to put forth his case that his product Aluminium foil should be treated as covered under the notification dated 31.12.1975. It seems that by interpretation or upon his own method incorporated in the grounds by the petitioner assessee the assessee is claiming his right that he is

not required to pay sales tax at the rate of 4% and his product Aluminium foil is covered under the notification dated 31.12.1975 but the petitioner assessee cannot be permitted to completely ignore the notification dated 13.06.1985.

26. The intention of the Legislature is required to be seen because for discharging sovereign functions of the State as per the constitutional provisions and for collecting revenue there is jurisdiction left with the Legislature to prescribe certain percentage of tax and some times exemptions for development of industrial growth in particular sector. But, at the time of exercising power not only the claim of the businessmen/entrepreneurs is to be seen but intention of the legislature and interest of the public at large is also required to be seen. The petitioner assessee is claiming his right upon following basic grounds which are as follows :

(a) His product Aluminium foil falls in the word "sheets" mentioned in the notification dated 31.12.1975, therefore, Aluminium foil is covered under the notification dated 31.12.1975.

(b) After completing the process mere change in the shape by mechanical pressing/thinning does not change the commodity and the commodity continues to hold the essential characteristics because Aluminium foil is thinner form of non-ferrous sheets which is one of the entry provided in the notification dated 31.12.1975.

(c) In common parlance Aluminium foil is to be treated as "sheets" and mere using the said Aluminium foil for packing purposes cannot change its original characteristics which is Aluminium non-ferrous sheets.

(d) The issuance of the subsequent notification dated 13.06.1985 by the State Government u/s 8 (5) of the Central Sales Tax Act prescribing 1% sales tax cannot be agitated by the Department because the said notification is not in supersession of the earlier notification dated 31.12.1975. More so, the notification dated 31.12.1975 being general and wide in nature covers Aluminium foil whereas being specific in nature the subsequent notification dated 13.06.1985 never debarred the assessee to take the benefit of notification dated 31.12.1975.

(e) The Tax Board has ignored the various dictionary meanings of the commodity Aluminium foil which were earlier considered by the Tax Board in its judgment dated 08.02.1999.

27. It is common fact that letters of alphabet run from A to Z which is the raw material for literary works and by using these letters various books are printed and published. Some times some books of unwholesome nature are published, some books are political, social and there are different types of books made available to the public at large for their individual and general taste. The fact, however, remains that the outcome of the words is from the letters of the alphabet. But, it does not mean that all the books should be treated similar in

nature. Therefore, the argument of learned counsel for the petitioner that after manufacturing Aluminium foil it does not lose its own character and on the basis of use it should not be treated as different commodity than Aluminium sheet is totally baseless.

28. Learned counsel for the petitioners cited so many judgments to substantiate his argument that mere change in the shape by pressing Aluminium sheets does not change the essential characteristics to become Aluminium foil which does not change the commodity and initial characteristics of the Aluminium sheet which is included in the notification dated 31.12.1975. It is true that a notification was issued on 31.12.1975 whereby specific exemption was granted to levy 1% rate of tax upon sale of non-ferrous rods, pipes, strips, sections, sheets, circles and tubings but purposely Aluminium foil was not included and for granting time-bound exemption upon Aluminium foil another separate notification was issued on 13.06.1985 whereby while exercising powers conferred by Section 8(5) of the CST Act, the State Government granted exemption for 5 years prescribing levy of tax at the rate of 1% in the course of inter-state trade of Aluminium foil; meaning thereby, the Legislature is treating Aluminium foil as separate and distinct commodity than the non-ferrous sheet, therefore, Aluminium foil was purposely not included in the notification dated 31.12.1975.

29. The notification dated 31.12.1975 and subsequent notification dated 13.06.1985 read as follows :

S.No.302: F.5(25) FDCT/72-79 dated 31.12.1975.-S.O.243.-In exercise of the powers conferred by s.8(5), CST Act, 1956, the State Government hereby directs that with effect on and from 01.01.1976, the tax payable under sub-section (1) of the said section by any dealer having his place of business in the State, in respect of the sale by him from any such place of business in the course of inter-state trade, of the goods specified in column number 2 of the list appended hereto, to which sub-section (1) applies, shall be calculated at the reduced rate shown against it in column number 3 of the said list on furnishing of a declaration in Form "C" or a certificate in Form "D", as the case may be,

I. No.

Description of goods

Rate of tax

1.

Non-ferrous rods, pipes, strips, section, sheets, circles, and tubings

1%

S.No.558: F.4(3)FD Gr.IV/83-19 dated 13.06.1985.-S.O.32.-In exercise of the powers conferred by S.8(5), CST Act, 1956, the State Government (2.) hereby directs that with immediate effect that tax payable under sub-section (1) of the said section by any dealer, having his place of business in the State, in respect of the sale by him from any such place of business in the course of inter- state trade of aluminium foils, shall be calculated at the reduced rate of 1% for a period of five years.

30. In my opinion, there is no quarrel with regard to adjudication made by the Hon''ble Supreme Court that mere change in the shape by mechanical pressing does not change the commodity and the commodity continues to hold the essential characteristics. Here, in the instant case, specifically a separate notification was issued for Aluminium foil because it is used for packing purposes, therefore, if any Aluminium sheet after processing created a new purpose for use then the Legislature can prescribe separate tariff for the use of that commodity. Here, in this case, both the aforesaid notifications are separate and distinct.

31. Notification dated 31.12.1975 was issued for the purpose of 1% tax upon non-ferrous rods, pipes, strips, section, sheets, circles and tubings but Aluminium foil was not included in the above commodities and another notification was issued on 13.06.1985 which was not in continuance of aforesaid notification dated 31.12.1975 but it was separate notification granting time-bound exemption in tax upon Aluminium foil. Therefore, all the judgments cited by learned counsel for the petitioners do not support the plea taken by the petitioner assessee for the purpose of taking advantage of notification dated 31.12.1975.

32. Learned counsel for the petitioners heavily relied upon the judgment of the Punjab & Haryana High Court, reported in 2009 (26) VST 667, rendered in the case of Excise and Taxation Commissioner, Haryana v. Print-O-Pack.

33. I have perused the said judgment. Said case was not directly related to the present controversy. In the said case, the assessing authority consistely took Aluminium foil to mean Aluminium sheet and those orders were accepted by the Revenue without challenge either before the appellate authority or before the Tribunal and those orders attained finality, therefore, the Punjab & Haryana High Court held that it is not possible to permit re-opening of the issue; meaning thereby, in the case of Print-O-Pack (supra) Punjab & Haryana High Court refrained from adjudicating the controversy on merit because orders were accepted by the Revenue without challenge and those orders had attained finality, therefore, the aforesaid question was not adjudicated on merit.

34. Here, in the State of Rajasthan, the Legislature purposely issued separate notification on 13.06.1985 for granting exemption upon sale of Aluminium foil for 5 years only. The notification issued on 13.06.1985 was not in continuance of the notification dated 31.12.1975 in which Aluminium foil was not included and petitioner has not challenged the validity of the notification dated 13.06.1985, therefore, the intention of the Legislature can be gathered from the aforesaid fact that the State Legislature was of the opinion that use of Aluminium foil is altogether different than the commodities enumerated in the notification dated 31.12.1975 and petitioner has not challenged the validity and legality of the

notification dated 13.06.1985. Therefore, the judgments cited by learned counsel for the petitioners cannot apply upon the present controversy.

35. It appears that without challenging the validity of notification dated 13.06.1985 whereby specific exemption was granted to levy 1% tax for five years upon Aluminium foil, totally baseless grounds have been taken by the petitioner assessee only to take advantage for not paying tax as per law. From last two decades, for one or the other reason, due to such litigation the State is not only losing its revenue but forced to contest the litigation before the Court upon totally baseless grounds of the petitioner assessee.

36. The contention of the petitioner that the meaning of dictionary was to be taken by the Tax Board for the purpose of assessing the petitioner''s right is also not tenable because once the legislature purposely did not include Aluminium foil in the entry of notification dated 31.12.1975, then, obviously the petitioner cannot claim benefit under notification dated 31.12.1975 on the ground that interpretation must be as per the dictionary meaning and not as per the intention of the legislature. Therefore, there is no substance in the argument of learned counsel for the petitioner that the Tax Board has ignored the meaning of the words "sheets" and "foil".

37. With regard to non-applicability of the notification dated 13.06.1985 for the reason that it has not been issued in supersession of the earlier notification dated 31.12.1975, yet another baseless ground has been taken by the petitioner assessee because the general tax is at the rate of 4% and exemption is granted for some of the googds as per their use vide notification dated 31.12.1975 purposely; and, later on, for five years the said exemption was granted for Aluminium foil vide notification dated 13.06.1985; meaning thereby, the intention of the Legislature is expressive that except for the commodities falling under the entry of notification dated 31.12.1975 general tax will be levied and purposely with regard to Aluminium foil exemption for five years was granted while issuing notification dated 13.06.1985, therefore, on this ground also no case is made out for interference. More so, the Tax Board has considered the entire facts and circumstances of the case in right perspective.

38. A strange ground is advanced by learned counsel for the petitioner that mere act of thinning, pressing, laminating does not bring into existence a new commodity. Such type of argument of the petitioner is also not sustainable in law because admittedly in the notification dated 31.12.1975 the words were used "non-ferrous rods, pipes, strips, circles and tubings", however, Aluminium foil was included for the purpose of levying tax at the rate of 1% for five years by subsequent notification dated 13.06.1985. The language of both the notifications itself speaks that there is no substance in the argument of learned counsel for the petitioner that it does not change its original character. Of course, the raw material is same but use of the commodity becomes changed. For illustration, the wood/timber is used for manufacturing doors and furniture which are costly whereas the wood for fire and cremation is not as costly because the use of the

wood is changed but the essential character of wood is that it is flammable. Therefore, the ground of the petitioner is totally untenable for the purpose of taxing statute.

39. Learned Tribunal elaborately discussed all the judgments cited by the assessee, therefore, there is no error in the adjudication made by the Tax Board in holding that "Aluminium foil" is different commodity than the Aluminium sheet. In my opinion, the claim of the petitioner assessee to treat Aluminium foil as non-ferrous sheets covered under notification dated 31.12.1975 is not sustainable in law in view of the fact that vide a separate notification dated 13.06.1985 time-bound exemption for 5 years to levy 1% tax instead of 4% tax was granted, which is not under challenge, itself is sufficient to hold that Aluminium foil is different commodity and use of that commodity is also altogether different than the commodities covered under notification dated 31.12.1975. Therefore, claim of the petitioners for treating Aluminium foil as Aluminium non-ferrous sheets is hereby rejected.

40. Consequently, all these revision petitions are hereby dismissed.

