

(2023) 10 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Revision Petition No. 15 Of 2006

M/s Tedco Granites Limited

APPELLANT

Vs

Assistant Commissioner Bhilwara

RESPONDENT

Date of Decision : 03-10-2023

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 56, 56(4)

Citation : (2023) 10 RAJ CK 0002

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : Pranjul Mehta, Sharad Kothari, Sunil Bhandari

Final Decision : Allowed

Judgement

Rekha Borana, J

1. The present revision (sales tax) petition has been preferred against order dated 23.11.2005 passed by the Member, Rajasthan Tax Board in appeal No.49/04/Bhilwara whereby second appeal as preferred by the respondent-Department has been allowed and the order dated 04.06.2003 passed by Deputy Commissioner (Appeals) has been reversed and order dated 30.09.2000 passed by the Assessing Authority, rejecting the application of the petitioner-Company for refund of the tax, has been affirmed.

2. The facts of the case are that the petitioner-Company purchased rock phosphate from M/s R.S.M.M. Ltd., Udaipur amounting to Rs.3,93,21,848/- after paying tax @3% (valuing to Rs.11,79,656/-) as moisture contents in the said rock phosphate was in excess of permissible limits, the seller M/s R.S.M.M. Ltd., Udaipur issued a credit note of the amount qua 1962.97 metric tonn rock phosphate to the petitioner-firm but did not issue credit note qua the sales tax charged by it on the said 1967.79 metric tonn of rock phosphate as it had deposited the sales tax in the State Exchequer.

3. Since the petitioner-Company had paid the sales tax qua the above quantity of

rock phosphate to M/s R.S.M.M. Ltd. Udaipur, who had deposited the same with the State Exchequer, it suffered an excess tax qua 1962.97 MT valuing to a sum of Rs.1,08,530/-. The petitioner-firm therefore moved an application dated 23.10.1999 before the Assessing Authority in terms of Section 56(4) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as, 'the Act of 1994') seeking refund of Rs.108530/- qua the component of tax on value of the credit note issued by M/s R.S.M.M. Ltd., Udaipur.

4. The application dated 23.10.1999 as filed by the petitioner-firm by the Assessing Authority vide order dated 30.09.2000 against which an appeal was preferred before Deputy Commissioner (Appeals) and the same was allowed vide order dated 04.06.2003. Aggrieved against the said order, an appeal was filed by the Assessing Authority before the Rajasthan Tax Board which came to be allowed on 23.11.2005. Learned Member of the Tax Board, while allowing the appeal, held that the Company failed to establish that it had actually suffered the incidence of tax and hence was not entitled for refund of the same. It is against the order dated 23.11.2005 that the present revision petition has been preferred by the petitioner-Company.

5. Learned counsel for the petitioner submitted that the finding as arrived by the Assessing Authority and as affirmed by the Tax Board is totally erroneous as the same is totally contrary to the material available on record. The finding of the Assessing Authority to the effect that extra tax paid by the Company was added to the manufacturing cost of the fertilizer and the fertilizer was sold at that extra cost and hence, the incidence of tax was transferred to the purchasers of the fertilizer, has no basis whatsoever. It is not comprehensible as to on what basis the said finding has been arrived to. In fact, the incidence of tax was actually suffered by the Company and therefore, in terms of Section 56(4) of the Act of 1994, it was very much entitled to claim refund of the extra paid tax.

6. Learned counsel further submitted that the reliance of the Tax Board on the case of M/s Mafatlal Industries Ltd. vs. Union of India, 111 STC 467 was also erroneous in so far as the same was a matter pertaining to income tax and further pertaining to a dealer. The ratio of Mafatlal (supra) would not apply to the present matter as the petitioner was not a dealer but was a manufacturing unit and a manufacturing unit, which procured the raw material for manufacture of fertilizers cannot be concluded to have transferred the incidence of tax to anyone. The Company could have manufactured the fertilizers only in proportion to the raw material supplied to it which admittedly, was less than the quantity purchased and that is why a credit note qua the less material was issued in its favour by the seller agency. However, as the tax qua the said less quantity of raw material paid by the Company to M/s. R.S.M.M. Ltd. was deposited by it to the State Exchequer, a credit note qua the same was not issued to the Company. Had M/s. R.S.M.M. Ltd. not deposited the tax with the State Exchequer, a credit note qua the same would definitely have been issued by it in favour of the Company. It is not in dispute that the extra tax was paid by the Company to M/s. R.S.M.M.

Ltd. and hence, the incidence of tax was actually suffered by it. The tax having been deposited with the State Exchequer by the M/s. R.S.M.M. Ltd. and the incidence of tax having been transferred to the Company, it rightly moved an application for refund of the same.

7. Per contra learned counsel for the respondent submitted that the finding as arrived by the Assessing Authority regarding the incidence of the tax having been transferred to the purchasers is based on the material which was available before him and the same cannot be disputed. Further, the same being a finding of fact is not amenable to revisional jurisdiction in view of the ratio laid down in the case of M/s. Sudarshan Silks & Sarees vs. Commissioner of Income-tax, Karnataka; AIR 2008 SCW 3706.

Learned counsel further submitted that question No.3 as framed by the petitioner in the present revision petition is itself sufficient to show that it was an admitted case of the petitioner itself that the incidence of tax had been transferred to the purchasers. It is the clear mandate of Section 56 of the Act of 1994 that a refund can be claimed only by the dealer or the person who actually suffered incidence of tax. It is a normal presumption that the dealer has passed the incidence of tax to the purchaser/consumer and if one alleges to the contrary, it has to be established. The fact of incidence of tax having not been transferred to the purchasers was neither ever averred by the petitioner nor was proved on record. In absence of any such averment and proof, the petitioner cannot be held entitled for refund of any tax.

8. Heard learned counsel for the parties and perused the material available on record.

9. This Court is of the clear opinion that the reliance of learned Member of Tax Board on the case of Mafatlal (supra) is totally erroneous in the present matter as firstly, the application for refund of tax was not moved by M/s. R.S.M.M. Ltd. who was the seller of the raw material. Secondly, it is clear on record that M/s. R.S.M.M. Ltd. who sold the raw material to the petitioner-Company had transferred the incidence of tax to the purchaser, that is, the petitioner-Company. Hence, M/s. R.S.M.M. Ltd. being not the dealer or the person suffering the actual incidence of tax could not have laid any claim for refund of the tax. In terms of Section 56(4) of the Act of 1994, such claim could have been laid only by the person who actually suffered the incidence of tax which, in the present matter, definitely was the petitioner-Company who had paid the tax to M/s. R.S.M.M. Ltd. M/s. R.S.M.M. Ltd. being a dealer/seller, transferred the incidence of tax to the petitioner-Company and petitioner being the person/entity who actually suffered the incidence of tax was definitely entitled for refund of the same.

10. The finding as arrived by the Assessing Authority that the amount qua the tax was adjusted by the Company in the bills raised against the purchasers of the fertilizer after manufacturing of the same, does not seem to have been arrived at on basis of any material or logic. It is an admitted fact that the raw material

supplied to the petitioner-Company by M/s. R.S.M.M. Ltd. comprised of excess moisture content quantifying to 1962.97 metric tonn valuing to Rs.36,17,690/-, qua which, a credit note was issued in favour of the Company. Evidently, the Company who had suffered the tax on the said sum of Rs.36,17,690/- was entitled to refund of the same as undisputedly, the raw material of the said value was never supplied to it. The amount of Rs.1,08,500/-, the component of tax on the value of Rs.36,17,690/-, was definitely refundable to the petitioner-Company.

11. In view of the above observations, the present revision petition is allowed. The order dated 23.11.2005 under appeal is set aside and that of Deputy Commissioner (Appeals) dated 04.06.2003 is restored.

12. All the pending applications, if any, stand disposed of.