(2006) 03 RAJ CK 0048

In the Rajasthan High Court

Case No : Sales Tax Rev. Petition No. 21 of 2005

Prateek Technocom Pvt. Ltd. APPELLANT

Vs

CTO and Others RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Rajasthan Sales Tax Act, 1994 — Section 11(3), 15, 4(1)

Citation : (2006) 3 RLW 2019 : (2006) 4 WLC 315

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : L.M. Bhandari and M.K. Jain, for the Appellant; Mohd. Rafiq, Senior Standing Counsel and Mohd. Aslam, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—These four revision petitions filed by the Assessee-petitioner against the Tax Board''s order dated 8.10.2004 are being disposed of by this common judgment.

2. The Assessee-petitioner claimed benefit of exemption from Tax under the notification No. 1082 dated 12.3.1997 which is reproduced herein below as under:

S. No. 1082 : F.4(1)FD/Tax Divn/97-109 dated 12.3.1997.

S.O. 307.- In exercise of the powers conferred by Section 15, RST Act, 1994, and in supercession of this Department notification No. F.4 (8) FDGr.IV/91-111 dated 6.3.1991 (S. No. 840), the State Govt. (1) hereby exempts from tax, the sale of iron and steel on the following conditions, namely:

1. That such iron and steel is used as raw material in the manufacture of iron and steel as specified in Section 14(iv), CST Act, 1956.

2. That such manufactured product is sold within the State or in the course of

inter-State trade or commerce; and

3. That such manufacturer shall issue a declaration to this effect in Form ST 17 appended to the Rajasthan Sales Tax Rules, 1995, to the selling dealer.

3. The assessee-petitioner purchased during the period in question angles, channels, flats, Bars and other items of iron and steel and manufactured by fabrication activity steel structures as per specifications given by the RSEB and sold the same to the Rajasthan State Electricity Board (for short as "RSEB") under the purchase orders placed by RSEB.

4. The Assessing Authority held that the assessee was not entitled to benefit of exemption under said notification dated 12.3.1997 on the ground that the contention of assessee that no manufacturing activity was involved in making of steel structures was unsustainable and since the angles, channels, flats, Bars and other items were purchased by assessee and it converted these items into different commercial articles known as steel structures or transmission towers sold to RSEB. The goods sold by assessee-petitioner could not be said to be covered within the ambit and scope of Section 14(iv)(v) of the Central Sales Act, 1956 (hereinafter referred to be as "Act of 1956"), which reads as under:

14(iv)(v) : steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)

5. The Assessing Authority, therefore, imposed tax on the assessee-petitioner by resorting to re-assessment power u/s 30 of the Act @ 3# and surcharge thereon. He also imposed penalty for misuse of declaration in form No. ST 17. Learned Deputy Commissioner (Appeals) partly allowed the first appeal of the Assessee-petitioner and he set aside the tax imposed by the Assessing Authority by holding that the goods manufactured by Assessee petitioner fell within the definition of steel structurals u/s 14(iv)(v) of the Act of 1956 and, therefore, imposition of additional tax was not justified. The assessee-petitioner had paid 4% RST on sale of steel structurals to RSEB also. The Revenue took the matter in second appeal before the Tax Board where the appeal of the revenue was allowed and the Tax Board, setting aside the order of D.C. (Appeals) held that the Assessing Authority was justified in imposing the tax and the goods manufactured by assessee-petitioner could not be held to be falling within the definition of Section 14(iv)(v) of the Act.

6. Being aggrieved by the order-of Tax Board, these revision petitions have been filed u/s 86 of the Act by the assessee-petitioner.

7. Heard learned Counsel and perused the impugned orders.

8. Learned Counsel for the assessee-petitioner contended that the assessee-petitioner fully satisfied with the conditions of said notification No. 1082 dated 12.3.1997 and its contention before the Assessing Authority that its activity of fabrication and converting of angles channels, flats, Bars and other items into steel structurals did not amount to ''manufacturing'' was with a view of contend

that if it is not construed to be a manufacturing activity, the goods purchased and goods sold by them being the same, no additional tax could be imposed by the Assessing Authority because they had already paid 4% sales-tax on the sale of finished goods to RSEB and therefore in view of single point levy of tax only permitted under R.S.T. Act, no purchase tax could be imposed by the Assessing authority. Without prejudice to that, their contention that if it is held to be manufacturing activity, even then since the finished goods or manufactured goods fall within the definition of Section 14(iv)(v) of the Act of 1956, being steel structurals, they were exempted from payment of any sales-tax or purchase tax in view of exemption notification dated 12.3.1997 quoted, herein above. Both these contentions are in alternative and mutually exclusive.

9. Per contra, Mr. Rafiq, Sr. Standing Counsel appearing for respondent-Revenue contends that if the contention of assessee-petitioner that fabrication activity undertaken by them does not amount to manufacture and does not bring into existence new commercial articles, that stand would not only be incorrect perse but would also support the case of the revenue as the condition No. 1 of the said notification dated 12.3.1997 would stand violated on the own admission of assessee-petitioner. Secondly he submits, relying on the judgment of this Court in CTO v. Vishwakarma Engineering Words, Jodhpur 2005 (13) Tax UpDate 11, that amount of processing done on the iron articles of bending them on corners and making holes therein has been held to be not amounting to manufacturing by this Court and, therefore, imposition of additional purchase tax by the assessing authority in the present case was justified and, therefore, the order of Tax Board deserves to be upheld. He also submits that finished goods fabricated, manufactured and sold by the assessee do not fall u/s 14(iv)(v) of CST Act and therefore assessee is not entitled to exemption under notification dated 12.3.1997.

10. Having heard rival submissions and given my thoughtful consideration, this Court is of the view that the present revision petitions filed by the assessee-petitioner deserve to be allowed. Firstly, the contention of petitioner that it does not amount to manufacturing so as to not to attract levy of tax again in view of 4% RST already paid on sale of steel structures to RSEB cannot be said to militate against its stand in the alternative that it is entitled to exemption from purchase tax under the notification dated 12.3.1997. The assessee-petitioner can always take alternative pleas before the Assessing Authority and it is not that one contention is taken to demolish its own case in the alternative plea. Secondly, it is true that condition No. 1 of the said notification requires that iron and steel purchased by the assessee-petitioner is used as raw material in the manufacturing of iron and steel as specified in Section 14(iv)(v) of the Act of 1956, but at the same time, one cannot forget that iron and steel purchased as raw material itself need not fall in any of the special category of Section 14(iv) of the CST Act. Therefore, iron and steel purchased as raw material by assessee-petitioner, if it is used as a raw material for manufacturing of iron steel, it is the finished goods or the manufactured goods which are required to fall u/s 14(iv) of

the Act of 1956 and not the raw material itself. The manufacturing activity is necessary for complying with the condition No. (1) of the modification.

11. Therefore, without going into the contention of assessee-petitioner that whether it amounts to manufacturing or not, this case can be decided only the second contention raised in the alternative whether manufactured goods i.e. steel structurals fall within the ambit and scope of Section 14(iv)(v) of the Act or not. The goods sold by the assessee-petitioner as borne out from the impugned order are steel structurals made by fabrication activity by various firms of iron steel like angles, channels, flats, Bars and other items which are specified in Section 14(iv) of the Act. What is important for complying with condition of said notification dated 12.3.1997 is the manufactured goods to fall in that category and not whether iron steel purchased as raw material itself falls in the said definition or not. The other two conditions of said notification namely that manufactured products are sold within the State or in the course of inter-State trade or commerce and that such manufacture shall issue a declaration form No. ST 17 to the selling dealer, are not in dispute and they stand satisfied in the present case.

12. In the opinion of this Court, the first condition of the said notification is also satisfied by the assessee-petitioner that steel structurals made out by fabrication of various angles, channels, Hats, Bars and other Items as per drawing and design supplied by RSEB and converted Into steel structurals fall within the definition of Section 14(iv)(v) of the CST Act and, therefore, the assessee-petitioner is entitled to exemption from tax on the sale or purchase of Iron and steel as raw materials. In the purchase orders of RSEB and invoices raised by assessee, there is clear mention of steel structurals only. The word ''steel structurals'' used in Section 14(iv)(v) are wide enough to cover steel structurals of any design or specification provided they are made of items like angles, joints, tees etc. mentioned in the brackets of said Section 14(iv)(v) of the CST Act. There is no reason why goods manufactured and supplied by assessee could not fall within the meaning of Section 14(iv)(v) of CST Act, 1956. Accordingly, the respondent assessee is held entitled to benefit of exemption from tax under Notification dated 12.3.1997.

13. The contention whether fabrication activity amounts to ''manufacturing'' or not, even though not required to be dilated upon for deciding the eligibility of petitioner to avail exemption under the said notification dated 12.3.1997 is also not without merit. In the face of fact that 4% tax on goods sold by assessee to RSEB stands paid and if it is held that there is no manufacturing activity, in view of single point levy tax system under RST Act, the Assessing Authority even otherwise could not have imposed any tax on the assessee-petitioner. This is also supported by clear provisions of Section 11(3) of the Act of 1994 relating to purchase tax which says that where tax is leviable in Sub-section (1) at the time of purchase of goods, no tax u/s 4 shall be leviable at the time of sale of such goods. Therefore, it is clear that Revenue could collect tax only at one point i.e.

either at the point of purchase of these goods or at the point of sale thereof. However, it seems that contention of assessee-petitioner that said activity of fabrication does not amount to manufacture raised in the first instance before the assessing authority does not hold much water and apparently the steel structural made out of angles, channels, flats, Bars and other items and converting the same into steel structural clearly amounts to bringing into existence different commercial articles and that would amount to manufacturing within the meaning of Sales Tax Act.

14. Therefore, this Court is of the view that the assessee-petitioner is entitled to exemption under the above quoted notification dated 12.3.1997 on the purchase of raw material of iron and steel because the same have been used as raw materials in manufacture of iron & steel i.e. Steel structural specified in Section 14(iv)(v) of the CST Act, 1956.

15. Accordingly, these revision petitions are allowed and the impugned order of Tax Board dated 8.10.2004 is set aside. No order as to costs.