(2013) 07 RAJ CK 0059

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 889 of 1999

Ramgarh Silica Pvt. Ltd. APPELLANT

Vs

Assistant Commissioner, Commercial Taxes RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 66 VST 514

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Alkesh Sharma, for the Appellant; Tanvi Sahay for R.B. Mathur, for the Respondent

Judgement

J.K. Ranka, J.—In this instant revision petition original application was filed before the Rajasthan Taxation Tribunal Jaipur, assailing the order dated October 22, 1998 passed by the Assistant Commissioner, Commercial Taxes Department, Jaipur, for the assessment year 1993-94 by which the claim of the petitioner was rejected even after grant of eligibility certificate granted by the District Level Screening Committee (in short, "the Committee") who granted the benefit under the Rajasthan Sales Tax New Incentive Scheme, 1989. However, this order was challenged before the Rajasthan Taxation Tribunal (in short, "the RTF''). Subsequently after abolition of the RTT, the matter stood transferred to this court. The learned counsel for the petitioner submits that four assessment orders were passed by the assessing officer (in short, "the A.O.") and all the four orders were challenged before this court.

2. He submitted that this court in S.B. Civil Writ Petition No. 5739 of 2001 (Ramgarh Silica Pvt. Ltd. Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) decided on August 3, 2005 allowed the writ petition and quashed the assessment order pending in between the same parties. Thereafter, this court again for the assessment year 1995-96 in SBCWP No. 5541 of 2001 (Ramgarh Silica Pvt. Ltd. Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) decided on August 26, 2010 followed the aforesaid

judgment dated August 3, 2005 and again came to the conclusion that the respondent A.O. was not justified in taking adverse view despite claim having been allowed by the committee.

3. The learned counsel for the petitioner also relied upon the judgment of this court in the case of Arihant Solvex Pvt. Ltd. Vs. State of Rajasthan and Another, and also in Laxmi Industries v. State of Rajasthan reported in [1995] 99 STC 584 (Raj) wherein this court came to the conclusion that the A.O. was not justified in deciding against the exemption certificate granted by higher authority, namely, the committee and accordingly quashed the same.

4. The learned counsel for the petitioner also relied upon the judgment of the honourable apex court, in the case of Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, where the honourable apex court came to the conclusion that the process in which the appellant is involved is manufacturing, therefore, when it has been held to be manufacturing then even on the merits the claim of the petitioner is to be allowed and stand of the A.O. in the light of the judgment of the apex court is bad. Accordingly, he prays for quashing of the assessment order.

5. The learned counsel for the petitioner further submits that according to his information judgments of two connected writ petitions, namely, SBCWP No. 5739 of 2001 (Ramgarh Silica Pvt. Ltd. Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) and SBCWP No. 5541 of 2001 (Ramgarh Silica Pvt. Ltd. Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) have become final and have not been challenged before the honourable Supreme Court.

6. On the other hand learned counsel for the respondent-Department Ms. Tanvi Sahay submitted that there is no justification for the petitioner to challenge the assessment order before this court and the petitioner had option to file an appeal before the Deputy Commissioner (Appeals) and therefore, challenge by way of writ petition and original application as was permitted before the RTT is not maintainable. She submitted that the proper recourse was to file an appeal and to redress the grievance available under the Act and not to challenge by way of writ petition. Therefore, at the outset she submitted that the writ petition is not at all maintainable. She submitted that the writ petition may be dismissed as the petitioner was having alternative remedy available with it.

7. After hearing the learned counsel for the parties and perusing the material on record as well as the judgments cited at the Bar, in my view when this court in two aforesaid connected writ petitions in between the same parties has quashed the assessment order itself and such orders of this court has become final then in view of this fact itself the claim of the respondent is not acceptable particularly, when this court has already quashed the assessment orders passed simultaneously therefore, there is no justification for relegating the matter back to the appellate authorities after almost 15 years.

8. This court in S.B. Civil Writ Petition No. 5739 of 2001 (Ramgarh Silica Pvt. Ltd.

Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) allowed the writ petition and quashed the assessment order pending in between the same parties. The relevant portion is quoted hereinbelow in (SBCWP No. 5739 of 2001):

Counsel for the petitioner submits that the controversy as raised in the present writ petition has already been decided by this court. Reference has been made of the judgment of this court in the case of Arihant Solvex Pvt. Ltd. Vs. State of Rajasthan and Another, Arihant Solvex Pvt. Ltd. Vs. State of Rajasthan and Another, and in the case of Laxmi Industries v. State of Rajasthan reported in [1995] 99 STC 584 (Raj). There cannot be any dispute that initially the petitioner had been given tax exemption up to 75 per cent under the new incentive scheme of 1989 as is evident from the eligibility certificate issued by the concerning authorities. This court, in the judgments referred above, has held that once such exemption having been granted, the Commercial Tax Officer and the taxing authority cannot issue fresh notice curtailing the percentage of the tax exemption without first getting the original exemption certificate modified.

Having considered entire facts and circumstances as also the judgments referred above, the present petition is also liable to be allowed.

Accordingly, the writ petition is allowed. The impugned notice and the consequential demand notice in the present matter are quashed and set aside.

9. Thereafter, this court again for the assessment year 1995-96 in between the same parties in SBCWP No. 5541 of 2001 (Ramgarh Silica Pvt. Ltd. Jaipur v. Assistant Commissioner, Commercial Taxes, Special Circle 2, Jaipur) decided on August 26, 2010 followed the aforesaid judgment dated August 3, 2005 and observed as under:

By now it is well-settled that under the Rajasthan Sales Tax Incentive Scheme, 1989, the jurisdiction to determine whether an industrial unit is eligible for sales tax exemption or not, has been conferred on the Screening Committee of the State Level or District Level depending upon the fact that whether the unit claiming exemption is a large scale unit or medium or small-scale unit. The assessing authority neither has any jurisdiction to decide the eligibility of a unit for exemption under the scheme nor has the jurisdiction to cancel an eligibility certificate granted by the screening committee, on any ground.

Mr. R.B. Mathur, learned counsel appearing for the respondent, has not disputed the correctness of the said judgment.

In the result, the writ petition is allowed. The impugned assessment order dated October 22, 1988 (annexure 8) and consequential demand notice dated October 22, 1988 (annexure 9) for the year 1995-96 are, hereby, quashed and set aside.

10. This court in the case of Laxmi Industries v. State of Rajasthan reported in [1995] 99 STC 584 (Raj) came to the conclusion that the CTO could not have recourse to sit upon the jurisdiction of screening committee to cancel the

eligibility certificate granted to the petitioner and observed and held as under (page 586 in 99 STC):

The learned counsel invited my attention to para 9 of the incentive scheme. The para 9 of the scheme deals with the breach of condition caused by the beneficiary of the holder of eligibility certificate. The present is not a case where any breach of condition on the part of the petitioner-assessee has been alleged. What has been alleged by the assessing authority in his return is that District Level Screening Committee has wrongly sanctioned the eligibility certificate to the petitioner and, therefore, he intends to withdraw the exemption. This, in my view, the assessing authority had no jurisdiction to do. If he was aggrieved that a sanction has wrongly been issued in favour of the petitioner which is contrary to the scheme, his option was to have approached the District Level Screening Committee, who if satisfied with the complaint of the Commercial Taxes Officer, could have taken appropriate proceedings by giving notice to the petitioner, if it was so permitted under the scheme. However, the Commercial Taxes Officer-respondent No. 3, could not have recourse to confer upon himself the jurisdiction to cancel the eligibility certificate granted to the petitioner on his opinion that it was wrongly granted. Therefore, issuance of notice, annexure 4, was wholly without jurisdiction and cannot be sustained. Notice, annexure 5, which is only a follow up notice, must also fail for the same reason.

11. So far as the present writ petition is concerned, the issue involved is squarely covered by the judgments of the aforesaid two writ petitions in petitioners'' (assessees) own case therefore, in the light of these judgments the order of the AO does not stand and is liable to be quashed and set aside. Even otherwise, this court in the case of Arihant Solvex Pvt. Ltd. Vs. State of Rajasthan and Another, and Laxmi Industries [1995] 99 STC 584 (Raj) , has come to the conclusion that the AO has no jurisdiction to sit over the judgment passed by the committee, and the proper course for the AO was to make a representation to the committee in case the petitioner was deviating from the claim originally granted which has not been done in the present case. Therefore, the AO has no jurisdiction to take his own view and going behind the eligibility granted by the committee. In the light of the judgments and the judgment of the apex court in the case of Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, in which the same business was there as in the present case where it has been held to be manufacturing and that was the objection of the AO that the assessee is not a manufacturer now therefore, in the light of the judgment of the apex court where the activity has been held to be manufacturing then even on the merits the claim of the petitioner deserves to be allowed.

12. Accordingly, in view of the above, the sales tax revision petition is allowed and the order passed by the AO is quashed and set aside. No order as to costs.

