(2011) 11 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6903 of 2009

RSWM Limited — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 17, 18, 2, 2(17), 2(24)

Citation : (2012) 54 VST 161

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Dinesh Mehta, for the Appellant; Lokesh Mathur on behalf of V.K. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—By these two writ petitions, the petitioners have challenged the clarification issued by the Finance Department (Tax Division) of Government of Rajasthan on October 10, 2008 whereby the State Government issued clarification that the term "tax payable" under the Rajasthan Value Added Tax Act, 2003 is the amount of tax leviable under the Act less the amount of input-tax credit if any for the purpose of the Scheme. The Scheme in question is the Rajasthan Investment Promotion Policy, 2003 which was issued by the State Government on August 20, 2003 with a view to provide the investors an attractive opportunity to invest in the State of Rajasthan and certain incentives in the form of subsidy was directed to be paid to the eligible units. The facts illustratively are taken from SBCWP No. 6903/2009--RSWM Limited v. State of Rajasthan. Clause 7 of the Rajasthan Investment Promotion Policy, 2003 ("RIPS 2003", for short) provides that in case of new investment made, the sum total of interest subsidy and wage/employment subsidy would be subject to a maximum limit of fifty per cent of the tax payable and deposited under the-Rajasthan Sales Tax Act, 1994, the Central Sales Tax Act, 1956 and Value Added Tax Act as and when introduced in the State. The Rajasthan VAT Act, 2003 was enforced with effect from April 1, 2006 during the operative period of RIPS, 2003, which was extended up to March 31, 2011. Clause 7(i)(a) of the Scheme reads as under:

7. Subsidies

(i)(a) In case of new investment made, the sum total of interest subsidy and wage/employment subsidy would be subject to a maximum limit of fifty per cent of the tax payable and deposited under the Rajasthan Sales Tax Act, 1994, the Central Sales Tax Act, 1956 and Value Added Tax Act as and when introduced in the State.

2. The impugned clarification issued by the tax division of the Finance Department of Government of Rajasthan on October 10, 2008, is also reproduced hereunder in extenso for ready reference:

Government of Rajasthan

Finance Department

(Tax Division)

No. F.4(18)FD/Tax.Div./2001 Jaipur dated October 10, 2008

The Government launched the Rajasthan Investment Promotion Scheme, 2003 vide this Department''s order No. F.4(18) FD/Tax-Div./2001 dated July 28, 2003 (amended from time to time) hereinafter referred to as ''the Scheme''. It has been brought to the notice of the Government by Commercial Taxes Department that there are some issues which need interpretation of certain clauses of the Scheme. After examination of the issues, to bring in more clarity the issues are clarified under clause 11 of the Scheme, as under:

Clarifications

1. Regarding periodicity for computation of subsidy under the Scheme, it is clarified that computation of subsidy under the Scheme shall be made on quarterly basis arte: submission of return for the quarter airing with proof of deposit of tax. It is further clarified that subsidy under clause 7 is allowable after deposit of the tax.

2. The term ''year'', occurring in the scheme, mean financial year.

3. The term ''tax payable'' under the Rajasthan Value Added Tax Act, 2003, is the amount of tax leviable under the Act less the amount of input-tax credit, if any, for the purpose of the Scheme.

4. Under the Incentive Schemes of 1987, 1989 and 1998, the goods manufactured by such units are not exempted but the units are exempted from payment of tax under the Rajasthan Sales Tax Act, 1954 and the Rajasthan Sales Tax Act, 1994. As such ''tax payable'' by such units is the amount of tax leviable on the taxable turnover.

5. In case of the unit availing of benefit of deferment of tax, part of tax payable is deposited by the unit and part of it is deferred for stipulated period which is paid later on in instalments. In such cases it is clarified that the amount of subsidy shall be divided in proportion to the tax payable under sub-section (1) of section 20 of the RVAT Act, 2003 and the amount of tax deferred under sub-section (3) of section 20 of the RVAT Act, 2003. The proportionate amount of subsidy shall be allowed against the tax payable under sub-section (1) of section 20 of the RVAT Act, 2003, on the basis of quarterly returns. The proportionate amount of subsidy shall be allowed at the time of deposit amount of deferred tax under sub-section (3) of section 20 of the RVAT Act, 2003.

6. Where the unit is engaged in trading of goods, other than the goods manufactured by it, subsidy is allowable only on the amount of tax payable on the sale of goods manufactured by such unit.

By order

Sd/-

(Aditya Pareek)

Deputy Secretary to Government

3. The grievance raised in the present writ petition is that the said clarification issued by the State Government on October 10, 2008 is contrary to the provisions of RIPS, 2003 as well as the Rajas than VAT Act, 2003 which does not define as such the term "tax payable" as such.

4. The learned counsel for the petitioners, Mr. Dinesh Mehta, therefore, contended that the term "tax payable" should be interpreted to mean the gross output tax payable under the VAT Act, 2003 and not ''net tax payable'' after deducting input-tax in the case of the petitioner-industry and the petitioner-industry as per clause 7 reproduced above could not be with reference to "net tax payable" under the VAT Act, but should be with reference to "gross tax payable" under the said Act. He urged that in purported exercise of powers for issuing such clarification conferred upon the State Government under clause 9 of the Scheme, which was amended on the even date of October 10, 2008 itself vide order No. F.4(18)/FD/Tax-Div./2001 dated October 10, 2008, whereby the power of rectification was conferred upon the assessing authority of the Commercial Taxes Department in terms of section 33 of the Rajasthan Value Added Tax Act, 2003. The State Government while issuing the clarification instead of amending the RIPS, 2003 itself and defining the term "tax payable" has illegally curtailed and limited the benefit of interest subsidy to the extent of 50 per cent of the "net tax payable" under the Rajasthan Value Added Tax Act, 2003 and consequently, the said clarification, annexure 14, dated October 10, 2008 deserves to be quashed by this court.

5. The learned counsel for the petitioner also drew the attention of the court towards the decision of co-ordinate Bench of this court in the case of connected

writ petition while deciding earlier writ petition filed by the petitioner in Uma Polymers Ltd. v. State of Rajasthan SBCWP No. 3850 of 2008, which was allowed by the co-ordinate Bench of this court on September 23, 2008 by which the learned single judge held that the assessing authority had no power of review or rectification under the said Scheme-RIPS, 2003 and consequently, the impugned rectification order, annexure 10 dated August 4, 2007, was liable to be quashed. However, he fairly submitted that the issue regarding consideration of terms "tax payable" was not decided by the co-ordinate Bench in the said judgment dated September 23, 2008 and in fact, on October 10, 2008 after few days of the said judgment, amendment in RIPS, 2003 was made conferring the said power of rectification on CTO by inserting clause 9(b)(viii) in RIPS, 2003.

6. The learned counsel for the petitioner submitted that the terms "output tax", "input tax", "reverse tax" and "tax period" have been denned in Rajasthan Value Added Tax Act, 2003 in section 2(17), 2(24), 2(33) and 2(39) of the Act and the terms "tax payable" as such have not been defined under the Act. He, therefore, submitted that higher interest subsidy would be payable to the assessee and under the garb of clarification dated October 10, 2008, such limit of 50 per cent could not be referred to the "net tax payable" as has been done under clause 2 of the impugned clarification dated October 10, 2008.

7. On the other hand, Mr. V. K. Mathur, learned counsel for the Revenue submitted that the tax payable by a dealer under the Rajasthan VAT Act, 2003 has been defined in section 17 of the VAT Act, 2003 which stipulates that "tax payable" under the said Act is "net tax payable" by a registered dealer for a tax period computed by formula; T = (O+R+P) - I where T is net tax payable; O is amount of output tax, R is amount of reverse tax and P is the amount of tax payable under sub-section (2) of section 4; and I is the amount of input tax. He also submitted that power to issue such clarification by the "Finance Department and Tax Division is clearly there in clause 11 of the RTFS, 2003 and powers to review, appeal and revision by the State Government are contained in clauses 11, 12, 13 and 14 of the RIPS, 2003, respectively. Said clauses are reproduced here below for ready reference:

11. Authority for implementation/interpretation:

All the related Departments shall implement the scheme. The Industries Department shall act as the nodal coordinating, monitoring and implementing Department. Any matter pertaining to interpretation of any clause of the Scheme shall be referred to the Government of Rajasthan in the Finance Department whose decision shall be final in such a matter.

12. Reviews and appeal:

The State Level Screening Committee and District Level Screening Committee, described under clause 6 of this Scheme, shall also be empowered to review their decision. The State Level Screening Committee shall hear and decide appeals against the orders of District Level Screening Committee. Provided that the aggrieved party has filed review application or the appeal within the period of 60 days from the date of communication of the decision of the committee.

13. Revision by the State Government:

(a) The State Government in Finance Department may suo motu or otherwise revise an order passed by any Screening Committee wherever it is found to be erroneous and prejudicial to the interest of the State revenue, after affording an opportunity of being heard to the beneficiary industrial unit.

(b) No order under the sub-clause (a) shall be passed by the State Government after the expiry of a period five years after the date by which the benefits under this scheme are fully availed of.

14. Review or Modification of Scheme:

The State Government in the Finance Department reserves the right to review or modify the Scheme as and when needed in public interest.

8. The learned counsel for the respondent Mr. V. K. Mathur, therefore, submitted that issuance of impugned clarification on October 10, 2008 was fully within the power and jurisdiction of the Finance Department (Tax Division) of the Government of Rajasthan and clarification under clause (2) that "tax payable" under the Rajasthan Value Added Tax Act, 2003 would be the amount of tax leviable under the Act minus the amount of input-tax credit for the purpose of the scheme, i.e., RIPS, 2003 is perfectly legal and in consonance with the provisions of the VAT Act, 2003, particularly, section 17 and since the very scheme of the VAT is to remove cascading effect of tax on successive sales made by the registered dealer, therefore, only the net tax that means gross out put tax minus input tax paid by the previous dealer on the sale to the present dealer being deducted therefrom, is the tax payable in the hands of the present assessee, the petitioner industry, who purchased the various raw materials and goods. The input-tax credit is deducted from their output tax liability on the sale of finished goods manufactured by them after value addition therein and it is only net tax liability which is tax payable (VAT) as per heading of section 17 of the Act itself and even though the said term "tax payable" is not separately defined u/s 2 of the Act or in RIPS, 2003, the only logical conclusion is that "tax payable" is "net tax payable" under the VAT Act. He also drew the attention of the court towards clause 7 of the RIPS, 2003 which clearly put limit of 50 per cent of the "tax payable and deposited" under the RST Act, CST Act or VAT Act, therefore, the word "deposited" would clearly amount to "net tax liability" as computed in accordance with section 17 of the Act. He also submitted that various clarifications 6 in number in the order dated October 10, 2008 have emphasized that benefit of subsidy under RIPS, 2003 would be payable after amount of tax in question is deposited by the assessee, so there is no question of relating the amount of subsidy to the gross output tax, but the deposited tax which only means net VAT after deducting input-tax credit. The learned counsel for the respondent-Department therefore, submitted that input-tax credit which

is available to the petitioner-industry as per section 18 of the Act is to be set off against the output tax liability before the "net tax payable" is computed under the VAT Act, 2003 and consequently, the clarification issued by the Finance Department on October 10, 2008 is perfectly legal and justified and there is no case made out by the petitioner-industry for quashing of the same.

9. Having heard the learned counsels on both sides, this court finds little force in the contentions raised by Mr. Dinesh Mehta, learned counsel for the petitioner. In the absence of words "tax payable" defined under the VAT Act, 2003 or RIPS, 2003 itself, it would be wrong to contend that the word "output tax" and "gross tax liability" under the Rajasthan VAT Act, 2003 should be construed to mean "tax payable" under the VAT Act, 2003 for the purpose of RIPS, 2003. The very concept of VAT is to permit the assessee in the series of successive sales to pay only "net tax liability" after deducting therefrom input tax paid by him to the seller of the goods and raw materials to him, so that cascading effect and repetitive tax liability on such successive sales is reduced and only the "net tax payable" on the value addition made by the assessee is levied in his hands. The VAT regime therefore, does not require payment of output tax straightway by the assessee or manufacturer in question and it allows set-off of input tax to such assessee or manufacturer. The words "tax payable" employed in RIPS, 2003 particularly the words "tax payable and deposited" used in clause 7 which gives interest subsidy and wage/employment subsidy clearly indicate that such subsidy will not exceed maximum limit of 50 per cent of the tax payable and deposited" under the relevant Sales Tax Taws, like, RST Act, 1994, CST Act, 1956, and VAT Act, 2003. Not only clause (2) of clarification dated October 10, 2008, but all the six clarifications point and emphasize the deposit of tax before benefit of subsidy under clause 7 of RIPS, 2003 can be given to the assessee. The contention of the learned counsel for the assessee, though attractive is devoid of any merit and substance because it is hypothetical figure to construe "tax payable" as the "gross tax liability" or "output tax" as defined in section 2(24) of the VAT Act, 2003 which means the tax charged or chargeable under this Act by a registered dealer in respect of the sale of goods in the course of his business. Section 17 of the Act with heading "tax payable by a dealer" on the other hand clearly provides that tax payable by dealer is only after deducing input tax and letter "T" which defines net tax payable is O (output tax) + R (reverse tax) + P (tax payable u/s 4(2)) - I (input tax). Therefore, the "tax payable" under the Rajasthan VAT Act, 2003 is nothing but "net tax payable" by the assessee or manufacturer as per section 17 of the Act.

10. In the considered opinion of this court, the clarification issued by the Finance Department (Tax Division) on October 10, 2008 is perfectly in consonance with the Rajasthan VAT Act, 2003 read with clause 7 of the Scheme-RIPS 2003 and the same cannot be said to be either without jurisdiction or bearing incorrect or erroneous interpretation of provisions of the Scheme or the VAT Act, 2003. Moreover, the subsidy provided under the RIPS, 2003 is a concession and there is no vested right of the assessee or manufacturer to claim a particular amount of

subsidy up to a particular limit and the amount of subsidy could be curtailed or limited as has been done in clause 7 up to 50 per cent of the "tax payable and deposited" under the Rajasthan VAT Act, 2003 or CST Act, 1956 or erstwhile Rajasthan Sales Tax Act, 1994 putting a limit on such amount of subsidy which is computed on the basis of interest paid on the funds borrowed by the assessee and such clarification of such term cannot be said to be unjustified, illegal or arbitrary. The interpretation sought to be put by the learned counsel for the petitioner that "tax payable" should be construed as "gross tax liability" would be de hors the provisions of the Scheme itself and VAT Act, 2003 and therefore, such distorted interpretation cannot be put on the terms "tax payable" and upon a harmonious and plain reading of said term in RIPS, 2003 and VAT Act, 2003 as given in clause 2 of the impugned clarification dated October 10, 2008 cannot be said to be arbitrary and illegal by any stretch of imagination and the same is found to be in consonance with the Act and the Scheme as per settled rules of interpretation of taxing statutes. The clarification dated October 10, 2008 being merely a clarification of interpretation of terns already existing would apply to all pending proceedings also and for the period prior to October 10, 2008, since the commencement of RIPS, 2003 itself and the impugned orders determining the cap of subsidy amount on the basis of net tax payable as well as the rectification orders to give effect to the same to rectify the mistake apparent under the relevant powers under the Act and Scheme would be permissible in law and the impugned orders passed by the authorities are thus bound to be upheld. Accordingly, both these writ petitions are found to be devoid of merit and same are accordingly dismissed. No order as to costs.