(2020) 01 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18176, 18225, 18294, 18381 Of 2019

Sangam India Ltd. APPELLANT

Vs

State Of Rajasthan And Ors RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Rajasthan Value Added Tax, Act, 2003 — Section 17, 33, 87
Rajasthan Value Added Tax Rules, 2006 — Rule 27
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 RAJ CK 0041

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kunal Kapoor, Aditya Singhi, Anil Bhansali, Akshat Verma

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioner aggrieved against the orders dated 14/11/2019 passed by the Rajasthan Tax Board, Ajmer and

attachment notices dated 22/11/2019 issued by the Assistant Commissioner, Commercial Taxes, Special Circle-I, Bhilwara.

It is inter alia indicated in the writ petitions that the petitioner has filed return for the relevant assessment period and filed an application under Rule 27

of the Rajasthan Value Added Tax Rules, 2006 (â??RVAT Rulesâ??) for subsidy under Rajasthan Investment Promotion Scheme (â??RIPSâ??).

The respondent no. 2 granted subsidy for the relevant period as claimed by the petitioner on the net tax payable which was calculated in accordance

with Section 17 of the Rajasthan Value Added Tax, Act, 2003 (â??RVAT Actâ??). However, subsequently the respondent no.2 passed rectification

order by which the RIPS subsidy granted to the petitioner was revised and the alleged excess subsidy was demanded along with applicable interest.

The order was purported to have been passed under Section 33 of the RVAT Act.

The petitioner challenged the order by filing appeal which was disposed of by the appellate authority by remanding back the matter to be decided after

affording opportunity of hearing, whereafter, the respondent no.2 again passed the order rejecting the contention of the petitioner and confirming the

demand along with interest. A notice for payment of demand in Form VAT 17 was issued on the same day.

Feeling aggrieved by the rectification order, the petitioner filed appeal before the appellate authority along with stay application. The stay application

came to be decided by order dated 1/11/2019, whereby, the application was partly allowed to the extent of recovery of interest, however, same was

rejected qua the tax amount.

The petitioner challenged the order before Tax Board. The Tax Board by its impugned order dated 14/11/2019 rejected the appeal filed by the

petitioner.

It is submitted that while the petitioner was in the process of challenging the order dated 14/11/2019, the respondent no.2 issued attachment notice for

recovery of outstanding tax liability from the accounts of the petitioner.

Feeling aggrieved the present petitions have been filed. It is submitted by learned counsel for the petitioner that the appellate authority and the Tax

Board were not justified in rejecting the stay application filed by the petitioner and/or grant only a partial stay order inasmuch as the action of the

respondent no.2 in issuing rectification orders was ex-facie without jurisdiction and, therefore, complete stay order should have been granted.

Further submissions were made that the action of the respondents is high-handed in taking the coercive proceedings against the petitioner for recovery

of the amount immediately after passing of the order by the Tax Board and on that count the action of the respondents deserves to be set aside.

Submission were made that when petition challenging the similar recovery is pending consideration before this Court in S.B.Civil Writ Petition No.

14232/203 : BSL Limited vs. State & ors., wherein, interim order has been granted by the Court, the action of the respondents is not justified.

Learned counsel appearing for the respondent department submitted that the plea raised by the petitioner has no substance inasmuch as the issue

raised is squarely covered by the judgment of this Court in RSWM Ltd. vs. State of Raj. & Ors. : SBCWP No.6093/2009 & Uma Polymer vs. State

of Raj.& Ors. : SBCWP No.10230/2009 decided on 24/11/2011.

Further submissions were made that order impugned is open to revision under Section 84 of the RVAT Act and, therefore, the petitions even

otherwise are not maintainable. Further, the two authorities below have appropriately dealt with the matters on the stay application filed by the

petitioner and, therefore, no interference is called for in the writ petitions and the same, therefore, deserve to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Insofar as the submission made by learned counsel for the petitioner on merit of appeal and validity of the order passed by the respondent no.2 raising

demand by exercising power under Section 33 of the RVAT Act is concerned, the challenge is pending consideration before the appellate authority

and to the said extent this Court is not required to adjudicate the said issue.

So far as the challenge laid to the non-grant of complete stay order on the demand raised by the respondent no.2 is concerned, the appellate authority

while deciding the stay application came to the conclusion that the grant of interim order against the excess payment of subsidy was not justified,

however, found that imposition of interest was apparently not justified and consequently stayed the demand qua interest by partly allowing the stay

application. On appeal, the Tax Board came to the conclusion that despite grant of opportunity, as requisite material was not produced by the petitioner

before the assessing authority it was left with no alternative but to determine the amount and, therefore, for failure to use the opportunity provided the

balance of convenience was not in favour of the petitioner and consequently rejected the appeals.

The orders passed by the appellate authority and the Tax Board are concurrent in nature and essentially deal with the grant of orders which are

interim in nature during the pendency of appeal before the appellate authority. The relevant factors for grant of interim order have been taken into

consideration by the authorities and based on which partial relief was granted by the appellate authority/appeal was rejected by the Tax Board.

Learned counsel for the petitioner failed to point out any perversity in the said orders so as to require interference under Article 226/227 of the

Constitution of India.

As already noticed hereinbefore, insofar as the validity of the demand raised is concerned, the issue is pending consideration before the appellate

authority and the same cannot be prejudged by this Court at this stage where the challenge has been laid to non-grant of interim order by the appellate

authority and upheld by the Tax Board.

So far as the enforcement of demand by the respondent no.2 is concerned, the said action by itself cannot vitiate the orders passed by the appellate

authority or Tax Board so as to require interference on that count.

So far as the order passed in the case of BSL limited (Supra) is concerned, merely because an interim order has been granted in some pending writ

petition, which was filed directly against the assessment order cannot be a reason enough for disturbing the orders passed by the two authorities

below.

In view of the above discussion no case for interference is made out. There is no substance in the writ petitions and the same are, therefore,

dismissed.