(2014) 08 RAJ CK 0039

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 382/2011

The Assistant Commissioner APPELLANT

Vs

Honda Siel Power Products Ltd. RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(2A)

Citation : (2014) 76 VST 125

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : R.P. Bairwa, OIC, Advocate for the Appellant

Judgement

Alok Sharma, J.—The Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur vide order dated 14.12.2001 dismissed two appeals bearing No. 208/ CST/2001-02 and No. 209/CST/2001-02, filed by the assessee against the orders of the assessing authority. Aggrieved of the order passed by the Deputy Commissioner (Appeals), the respondent-assessee filed two second appeals, bearing No. 238/2002/Jaipur and No. 239/2002/Jaipur before the Rajasthan Tax Board, Ajmer. Vide order dated 10.07.2002, both the aforesaid appeals were allowed by the Rajasthan Tax Board and the order passed by the Deputy Commissioner (Appeals) on 14.12.2001 upholding the orders of assessment by the assessing authority was quashed and set aside. The Rajasthan Tax Board in its order dated 10.07.2002 noted that the points in the two appeals pertaining to the assessment years 2000-01 and 2001-02 were similar in nature and related to the very same assessee and therefore it was proceeding to dispose of the two appeals by a common judgment. The issue before the Tax Board was whether exemption from tax granted on the sale and purchase of water pumps and/or diesel engines having capacity upto 10 Horse Power (HP) under notification No. F.4(1)FD/Tax Div/2000-361 dated 19.06.2000 u/s 15 of the Rajasthan Sales Tax Act 1994 (hereinafter ''the Act of 1994'') was general or conditional in nature. In the event of the exemption being general in nature the assessee was entitled to exemption from tax qua the goods in issue even in respect of inter-State sales by virtue of Section 8(2A) of the Central Sales Tax, 1956 (hereinafter ''the Act of 1956''). The Tax Board on consideration of the matter held that the exemption in issue in respect of sale and purchase of water pumps and/or diesel engines having capacity upto 10 Horse Power (HP) sold by the assessee was general in nature as it related to an identifiable category of goods and hence no tax even in respect of inter-State sales of water pumps and/or diesel engines having capacity upto 10 Horse Power (HP) was leviable on the respondent-assessee in accordance with law--as the exemption in issue also inured such sales u/s 8(2A) of the Act of 1956.

2. Against the decision of the Tax Board in Appeal No. 239/2002/Jaipur, a revision petition [STR No. 01078/03 (defect)] was filed by the revenue before this Court. The said petition was dismissed by this Court for non-prosecution in the presence of the counsel on 13.02.2008. No steps were taken by the revenue for recall of the order dated 13.02.2008 and the order has attained finality over the last about six years.

3. The present revision petition is directed against the decision of the Rajasthan Tax Board in the other Appeal No. 238/2002/Jaipur decided on 10.07.2002. The issue agitated in this revision petition is evidently identical to the one agitated earlier by the revenue in STR No. 01078/03(D). With the dismissal of the said earlier revision petition for non-prosecution on 13.02.2008, the issue has been determined against the revenue and the decision of the Tax Board in Appeal No. 239/2002/Jaipur has attained finality. The same issue between the petitioner and the respondent-assessee is now sought to be reagitated in this revision petition.

4. In my considered opinion, a different view cannot be taken in this revision petition directed against the decision of the Rajasthan Tax Board fin Appeal No. 238/2002/Jaipur as the decision of the Rajasthan Tax Board in Appeal No. 239/2002/Jaipur on the same issue decided on 10.07.2002 has attained finality. The Hon''ble Supreme Court in the case of Municipal Corporation of City of Thane Vs. Vidyut Metallics Ltd. and Another, has held that even though each assessment year in respect of tax liability is an independent event as against other year, yet if the nature and character of the transaction remains the same, the character of the transaction earlier by the orders of the court binds in subsequent year with regard to the nature and character of the subsequent similar transaction. The same position has also been recognized albeit impliedly by the Hon''ble Supreme Court in the case of Southern Sea Foods Ltd. Vs. Jt. Commissioner of Income Tax, In my considered opinion, the judgments of the Hon''ble Supreme Court referred to above apply on all fours to the case at hand. The judgment of the Tax Board qua an assessment year in respect of the nature and character of the exemption u/s 15 of the Act of 1994 regarding the sale and purchase of water pumps and/or diesel engines having capacity upto 10 Horse Power (HP) has attained finality with the dismissal of the revenue''s revision thereagainst before this Court albeit in default. This Court cannot take a contrary

view in respect of a similar transaction/exemption in another year even in the best case scenario for the revenue-lest contradictory orders in respect of the same transaction (in nature and character) qua different years pertaining to the same assessee are passed.

5. The revision petition is without force and dismissed.

