(2015) 08 GUJ CK 0001

In the Gujarat High Court

Case No : Sales Tax Reference No. 2 of 1999

The State of Gujarat APPELLANT

Vs

Gandhi Oil Mill RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 69

Citation : (2016) 88 VST 81

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : Pranav Trivedi, Assistant Government Pleader, for the Appellant; Tanvish U. Bhatt, Advocate, for the Respondent

Judgement

Harsha Devani, J.—The Gujarat Sales Tax Tribunal at Ahmedabad has referred the following questions for determination by this court under the provisions of section 69 of the Gujarat Sales Tax Act, 1969:--

"(1) Whether on the facts and in the circumstances of the case, the decision of the Tribunal dated 2-3-86 is perverse and contrary to evidence produced in the case and/or based on no evidence when it held that purchases of groundnut cakes of Rs. 61,802/- in Samvat Year 2027 alleged to have been made by the opponent from one Shri Ratilal Bhogilal of Kapadwanj were to be treated as R.D. purchases and that in such matters, burden of proof, to prove contrary lies upon the Department and that the Department has failed to produce any such proof?

(2) Whether on the facts and in the circumstances of the case, the decision of the Tribunal dated 2-3-86 is perverse and contrary to evidence produced in the case and/or based on no evidence when it held that purchases of groundnut cakes of Rs. 1,25,381/- in Samvat Year 2028 alleged to have been made by the opponent from one Shri Ratilal Bhogilal of Kapadwanj were to be treated as R.D. purchases and that in such matters, burden of proof, to prove contrary lies upon the Department and that the Department has failed to produce any such proof?"

2. Mr. Tanvish Bhatt, learned advocate appearing on behalf of the respondent has invited the attention of the court to the assessment order to submit that the total tax effect is only an amount of Rs. 29,843-34 paise in respect of Samvat Year 2027 and an amount of Rs. 40,000/- in respect of Samvat Year 2028.

3. Mr. Pranav Trivedi, learned Assistant Government Pleader has placed reliance upon a decision of the Division Bench of this court rendered in Sales Tax Reference No. 3 of 1989 and 14 of 1989 in the case of Happy Oil Industries Vs. State of Gujarat--> to point out that in the case of the assessee itself, the Tribunal had held the purchases to be non-genuine and this court in Sales Tax Reference No. 14 of 1989 had answered the reference in favour of the revenue and against the assessee.

4. A perusal of the judgment delivered by this court in Sales Tax Reference No. 14 of 1989 reveals that the court had upheld the findings of fact recorded by the Tribunal as being in consonance with the material on record and, therefore, not perverse. In the present case, which relates to two previous years, the Tribunal upon appreciation of evidence on record has found the purchases to be genuine on the ground that the assessee had produced sufficient material and that the revenue had failed to rebut the evidence produced by the assessee. Evidently, therefore, the matter turns on appreciation of the evidence on record. Having regard to the smallness of the amount involved, this court is not inclined to entertain the reference. The reference is, accordingly, disposed of.

