

(2018) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Revision No.63, 64 of 2012, 110 of 2013, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135 of 2017

Vardhman Tiles Pvt. Ltd. @APPELLANT@Hash Commercial Taxes Officer

Date of Decision : 02-07-2018

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 2(7), 2(15), 2(22), 18(1), 18(1)(g), 18(1)(e)(g), 82, 83
Rajasthan Value Added Tax Rules, 2006 — Rule 30, 31, 33
Code of Civil Procedure, 1908 — Order 41 Rule 17

Citation : (2018) 07 RAJ CK 0001

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Vineet Dave, Abhishek Mehta, Lalit Pareek, Sharad Kothari, Anil Bhansali, Bhagirath Patel

Final Decision : Partly Allowed

Judgement

These revision petitions are directed against various judgments passed by the Rajasthan Tax Board, Ajmer (the Tax Board), whereby, the

appeals filed by the petitioners against orders passed by the Deputy Commissioner (Appeals)/Addl. Commissioner (Appeals), Commercial Taxes and orders passed by the Assessing Authority have been rejected.

While Civil Revision No. 63/2012 and 64/2012 are directed against the common judgment dated 15/12/2011 passed by the Tax Board, Civil Revision

No. 110/2013 is directed against the judgment dated 28/2/2013 passed by the Tax Board and rest of the revision petitions are directed against the common order dated 1/3/2017 passed by the Tax Board.

As the issues raised in all the revision petitions are similar, the same were taken up together for final hearing.

The petitioners assessees are dealers registered under the provisions of

Rajasthan Value Added Tax Act, 2003 (the Act, 2003), who undertake manufacturing of Marble Blocks and Marble Slabs and are also engaged in trading of Marble Blocks, Slabs and Tiles. It is claimed that the petitioners are registered dealers under the provisions of Rajasthan Sales Tax Act, 1954 (the Act, 1954) and Central Sales Tax Act, 1956 (the Act, 1956) and their Registration Certificates indicate them as Manufacturer and Wholesaler. It is also claimed that as registered dealers, the petitioners are entitled to avail Input Tax Credit (ITC) towards Value Added Tax (VAT) paid on purchase of capital goods and consumables as a set off against Output Tax.

For the various Assessment years in question, the petitioners submitted their claims for ITC on spare parts and incidental accessories, consumables, purchase of items used for replacement of capital goods used at the mines for manufacturing. The Assessing Officer vide various assessment orders rejected the claim made by the petitioners for availing benefit of ITC by referring to the provisions of Section 18(1) of the Act, 2003 holding that mining activity does not amount to manufacture.

Feeling aggrieved by the assessment orders, the petitioner/Assessee filed appeals before the Deputy Commissioner (Appeals)/Additional Commissioner (Appeals), Commercial Taxes Department under Section 82 of the Act, 2003, however, the appeals were rejected. Against the rejection of appeals, the petitioners preferred appeals before the Tax Board, the Tax Board by its impugned judgments rejected the appeals filed by the petitioners.

It would be relevant to notice here that while the judgments impugned in Civil Revision Nos. 63/2012, 64/2012 and 110/2013 were delivered after hearing both the parties, the impugned judgments in rest of the revision petitions i.e. Civil Revision Nos. 125/2017 to 135/2017 were decided on merits in absence of any representation on behalf of the petitioners.

It is submitted by learned counsel for the petitioners that the finding recorded by the three authorities below are dehors the provisions of the Act, 2003

and as such the judgments impugned deserve to be quashed and set aside and it be held that the petitioners are entitled to avail ITC on the capital

goods. With reference to the provisions of Input Tax Credit as contained in Section 18 (1)(e) & (g) of the Act, 2003 read with definition of capital

goods as contained in Section 2(7) and that of 'manufacture' as contained in Section 2(22) of the Act, 2003, it was submitted that the definitions contained therein are inclusive and not exhaustive.

It is further submitted that various submissions were made before the Tax Board inter alia indicating that the finding regarding activity undertaken by

the petitioners being 'mining only' is factually incorrect as marble embedded in earth as such cannot be used for any purpose and it undergoes

processing, which results in value addition making it a distinct commercial commodity. A submission was made that the definition of

'manufacture' clearly envisages every processing of goods which brings into existence a commercially different and distinct commodity,

however, the extent of processing is not indicated and therefore, howsoever small process may be involved, the same cannot take the same away

from the definition of 'manufacture'. It was submitted that exhaustive submissions regarding the processes involved were made before the Tax

Board in Civil Revision Nos. 63/2012, 64/2012 and 110/2013, however, the Tax Board did not discuss the process at all.

Further submissions were made that marble in the form of rock attached to earth is not usable, excavation makes it commercially viable and for taking

out the blocks, processing needs to be undertaken and, therefore, the requirement of definition of 'manufacture' is fulfilled and, as such there

was no reason for the three authorities below to reject the claim of the petitioners in this regard.

Further submission was made that the authorities below by merely indicating that the petitioners were involved in mining has rejected the claim without

even advertng to the process involved despite the fact that mining as such has not been notified as an excluded process in terms of provisions of

Section 2 (22) of the Act, 2003.

With reference to the judgment dated 1/3/2017 passed by the Tax Board in Civil Revision Nos. 125/2017 to 135/2017, it was submitted that the

appeals were decided by the Tax Board despite there being absence of representation on behalf of the petitioners, which is contrary to the provisions

of Rules 30, 31 and 33 of the Rajasthan Value Added Tax Rules, 2006 ('the Rules, 2006').

Reliance was placed on Commissioner of Income Tax vs. Arihant Tiles & Marbles

Pvt. Ltd. : D.B. Income Tax Appeal No.29/2008, decided on

20/2/2013, Commercial Taxes Officer vs. Prakash Udhyog : 126 STC 372 and Commercial Taxes Officer vs. Bhonri Lal Jain : 94 STC 118.

Learned counsel for the respondent Department supported the judgments impugned.

It was submitted that the entire argument sought to be raised by the petitioners is baseless. With reference to definition of "manufacture" as

contained in Section 2(22) of the Act of 2003, it was submitted that the prerequisite for manufacture is "processing of goods", however, as no

goods whatsoever are involved, all subsequent submissions made in this regard seeking grant of ITC have no basis.

With reference to the judgment of this Court in Triveni Oil Field Services Ltd. vs. C.T.O. : 2001 (1) RLW 588, it was submitted that the activity of

excavation cannot be treated as an activity of manufacturing as manufacture would imply existence of some raw material over which some manual or

mechanical process can be applied and, therefore, the plea sought to be raised by the petitioners has no basis.

With reference to the submission that mining activity has not been excluded by any notification in terms of provisions of Section 2 (22) of the Act,

2003, it was submitted that as the activity itself does not fall within the term "manufacture" there was no necessity of notifying the same.

Further submissions were made that the plea sought to be raised by the petitioners regarding application of process etc. is wholly without any

substance as the marble block continues to remain marble block except for change in dimensions and as such, the petitioners cannot claim having

applied any process in this regard. It was prayed that the revision petitions filed by the petitioners deserve to be dismissed.

Reliance was placed on Commercial Taxes Officer vs. Bikaner Gypsum Ltd. : 1985 RLW 610 and State of Maharashtra vs. Mahalaxmi Stores : 2002

AIR SCW 4902.

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

A bare look at the judgment impugned in Civil Revision Nos. 63/2012, 64/2012, which appeals were heard bipartite by the Tax Board would reveal that

the Tax Board recorded the following findings while dismissing the appeals:

â?? osV vf/kfu;e dh /kkjk 2Â¼22Â½ ds rgr fofuekZ.k ,oa /kkjk 2Â¼7Â½ ds rgr dsihVy xqM~l dks fuEu izdkj ifjHkkf""kr fd;k x;k gS %&

(22) â??manufactureâ? includes every processing of goods, which brings into existence a commercially different and distinct commodity but shall not

include such processing as may be notified by the State Government.

2(7) â??Capital Goodsâ? means plant and machinery including parts and accessories thereof, meant for use in manufacture unless otherwise notified

by the State Government from time to time in the official Gazette.

ekbZfuax ds nkSjku ekcZy pV~Vkuksa dks dkVdj ekcZy CykWdI ds mR[kuu es dksbZ i`Fkd ,oa fofâ??k""B :i ls fHkUu oLrq ugha fudyrh gS] cfYd

Hkwfe ds uhps igys ls ekStwn ekcZy dks ek= [kksndj ekcZy CykWd ds :i esa ckjg fudkyk tkrk gSA blfy, ekbZfuax ls ekcZy dk dsoy mR[kuu

fofuekZ.k dh izfÃ?;k ugha gSA vr% vihykFkhZ }kjk ekcZy pV~Vkuksa ls ekcZy CykWd dk mR[kuu djus dh izfÃ?;k osV vf/kfu;e dh /kkjk

2Â¼22Â½ ds vUrxZr fofuekZ.k dh Js.kh esa ugha vkrh gSA blfy, vihykFkhZ ds ekbZfuax dk;Z esa iz;qDr IykaV ,oa eâ??khujh e; ikVZI o ,Dlslht

osV vf/kfu;e dh /kkjk 2Â¼7Â½ ds rgr ^^dsihVy xqM~l ugha gSAâ??

In the judgment impugned in Civil Revision No. 110/2013 also, the Tax Board came to the conclusion that as capital goods have not been used for

manufacturing, the assessee was not entitled for grant of ITC.

In the judgments impugned in Civil Revision Nos. 125/2017 to 135/2017, almost similar finding has been recorded, which reads as under:

â??vf/kfu;e dh /kkjk 18Â¼1Â½ ds mijksDr izko/kkuksa ds vuqlkj O;ogkj }kjk dj pqdkdj dPps eky ds :i esa Ã?; fd;s x;s eky dk fofuekZ.k dh izfÃ?;k

ds nkSjku uohu oLrq dk fuekZ.k dj] dj ;ksX; eky ds :i esa foÃ?; fd;s tkus dh fLFkfr esa gh pqdk;s x;s osV dk vkbZ-Vh-lhvukS; fd;k x;k gSA mDr

izko/kkuksa ls ;g Li""V gS fd [kuu izfÃ?;k esa iz;qDr dUT;wescy vkbZVEI ij pqdk;s x;s osV dk vkbZ-Vh-lh- vuqKs; ugha gksxkAâ??

It would be relevant to notice the provisions of Section 2(7),

2(22) and 18 (1) (g) of the Act, 2003, which read as under:

â??2(7) â??capital goodsâ? means plant and machinery including parts and accessories thereof, meant for use in manufacture unless otherwise

notified by the State Govt. from time to time in the Official Gazette;

â??Explanation â?" For the purpose of this clause, generating set for generation

of electrical energy to be used in manufacturing shall be treated as capital goods.

2(22) "manufacture" includes every processing of goods which brings into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government;

18. Input Tax Credit.:-

(1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of section 3 or section 5, in respect of

purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose

of :-

(a) being used in the State as capital goods in manufacture of goods other than exempted goods;

(b) being used in the State as capital goods in manufacture of goods other than exempted goods;

(c) being used in the State as capital goods in manufacture of goods other than exempted goods;

(d) being used in the State as capital goods in manufacture of goods other than exempted goods;

(e) being used in the State as capital goods in manufacture of goods other than exempted goods;

(f) being used in the State as capital goods in manufacture of goods other than exempted goods;

(g) being used in the State as capital goods in manufacture of goods other than exempted goods.

A bare look at the above definitions would reveal that Input Tax Credit is allowed to a registered dealer in respect of purchase of any taxable goods

within the State from a registered dealer to the extent and in such manner as may be prescribed for the purpose of being used in the State as capital

goods in manufacture of goods other than exempted goods. Term "manufacture" has been defined as including every processing of goods which

brings into existence a commercially different and distinct commodity and further provides that the State Government by notification can exclude any

process from the said definition. Further the term "capital goods" has been defined as plants and machinery including parts and accessories

thereof meant for use in manufacture unless otherwise notified by the State Government.

The three provisions would reveal that for an assessee to avail Input Tax Credit the activity undertaken by it must involve manufacture of goods and

the activity of manufacturing in turn must involve processing of goods.

Much emphasis has been laid by the learned counsel for the petitioners that making of marble blocks and marble slabs involves processing of goods,

which aspect has not at all been adverted to by the authorities below and that processing is a necessary ingredient of manufacture, which aspect was

required to be taken into consideration while determining whether manufacture of marble blocks and slabs involves processing of goods or not.

A perusal of the findings recorded by the Tax Board, as quoted hereinbefore, would reveal that the Tax Board by only indicating that "mining

activity" is involved, has denied ITC to the petitioners. The specific plea raised by the petitioners regarding "processing of goods" as

required by the definition of "manufacture" has apparently not at all been adverted to by the Tax Board and/or the other two lower authorities.

In the above context, it would be relevant to refer to the definition of "goods" as contained in Section 2(15) of the Act, 2003, which reads as

under:

"(15) "goods" means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks,

shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other

things attached to or forming part of the land which is agreed to be severed before sale or under the contract of sale" (emphasis supplied)

A perusal of the above definition reveals that "goods" have been defined as all kinds of movable property including things attached to or forming

part of the land which is agreed to be severed before sale or under the contract of sale.

It is well settled that the provisions of a statute have to be read, understood, construed and applied by taking into consideration all other relevant

provisions of the statute and a word or phrase used in the statute cannot be interpreted based on a particular interpretation given in the context of

some other statute.

In view of the fact that the definition of "goods" includes things attached to or forming part of the land which is agreed to be severed before sale

or under the contract of sale and the definition of "manufacture" includes every processing of goods, the fact that whether marble rocks

embedded in earth (land) by its conversion into marble blocks/slabs would amount to 'processing of goods' as required as per the definition of

'manufacture' under Section 2(15) of the Act, 2003 was required to be determined by the authorities below, which aspect has not at all been

adverted to. Merely because the marble blocks are obtained by mining activity alone cannot be a determinative factor, as held by Tax Board.

In the case of Triveni Oil Field (supra) cited by learned counsel for the respondent, the issue involved was whether excavating oil, mineral and gas

from the earth could be treated as manufacturing activity, the observations as under were made:

(9). Having considered carefully the contentions raised before me and having gone through the record of the case that has been placed before me, I

am of the opinion that so far as the submission of the learned counsel for the petitioner to hold the activity of excavation as an activity of

manufacturing is concerned it cannot be sustained. In the absence of any legal fiction to that effect, 'Manufacture' even in its widest term would imply

existence of some raw material over which some manual or mechanic process can be applied for effecting it more useable or converting into a

different commodity but it cannot be applied to an activity of mining inasmuch as mining is not a process applied to a thing or a substance which has

already come into existence for being subjected to process. Mineral is the natural resource, which has to be obtained in raw form from beneath the

earth by applying some process. Reaching to the source of the existence of the substance cannot be a process of manufacture. It may be seen that

while the definition of very wide amplitude has been designed under the Rajasthan Sales Tax Act of the term 'manufacture' but it does not include the

activity of excavation.

(10). The learned counsel for the petitioner has urged that the term 'extraction' has been used which is equivalent to the term 'excavation'. This is

contrary to the ordinary dictionary meaning of two terms.

(11). The word 'extract' has been assigned the meaning in the Chambers Dictionary 'to obtain by chemical or physical means from containing or

combined matter'. It has been defined as a noun as 'anything drawn from a substance by heat, distillation, solvents etc. as an essence. Activity of

extraction implies existence of some substance, by applying same process from

which its essence can be secured.

(12). In contrast, the word 'excavate' means 'to dig out', 'to lay bare by digging' 'to hollow or scoop out'. Word 'Excavation' a noun, has been defined

as 'the act of excavating a hollow or cavity', 'made by excavating and archeological site', 'a dig'. The term 'extraction' has been applied to an act of

extracting, 'derivation from a stock or family, birth lineage' 'that which is extracted'. The essence of an activity of an extraction is to draw out the

essence from a substance which may be combination of composition of so many other things. In these circumstances, I am of the opinion that the

activity of mining in the absence of any legal fiction to the contrary cannot be equaled with the activity of manufacture in its plain meaning taken in its

wide amplitude. Else it would mean to make a statement of fact that a person manufacture, which otherwise is a creation of nature.

A perusal of the principle laid down by this Court would reveal that in absence of any legal fiction to the contrary, mining activity as such was held to

be not a 'manufacture'.

In the present case, as noticed hereinbefore, the definition of 'goods', whereby, includes things attached to or forming part of the land which is

agreed to be severed before sale have been included, the same is required to be considered in view of the material placed by the petitioners before the

Tax Board, which the Tax Board has failed to take into consideration.

So far as the judgments in the case of Bikaner Gypsum Ltd. (supra) and Mahalaxmi Stores (supra) are concerned, as already observed, the same

have to be read in the context of provisions and cannot be applied universally to all situations.

The observations made by the Division Bench in the case of Arihant Tiles & Marbles Pvt. Ltd. (supra) in the context of 'processing' of marble,

which are relevant in the present context, read as under:

19. The Act does not prescribe the degree or extent of 'cutting and polishing' to be applied to the marble blocks. Any process applied to the rough

mineral, which adds value to marketable commodity would create an eligibility for the benefit of deduction. When rough marble is cut into dimensional

blocks of uniform colour and size and also certain amount of dressing and polishing, which would remove various natural flaws such as colour

variations etc, it would certainly amount to 'processing' of the marble and adds

value to its marketability. The Act does not specifically mentioned that the marble should be given final cut and final polish before being exported. If such a view is taken, the purpose of allowing the benefit to 'cut and polished mineral rocks' towards deduction under sec.80HHC of the Act would get frustrated.â??

In view of the above factual & legal situation, the judgments passed by the Tax Board as impugned in Civil Revision Nos. 63/2012, 64/2012 and 110/2013 cannot be sustained and same deserve to be remanded back to the Tax Board for consideration in view of the observations made hereinbefore.

So far as the judgment impugned in Civil Revision Nos. 125/2017 to 135/2017 are concerned, a perusal of the judgment would reveal that though the matter had come up before the Tax Board for consideration of the application sent by the petitioners for grant of stay, in absence of any representation on behalf of the petitioners, the matters were heard and decided on merit exparte.

The provisions of Rule 31 of the Rules, 2006 provides that in an appeal before the Tax Board under Section 83 of the Act, 2003, the procedure prescribed under Rule 30 shall mutatis mutandis apply for such appeal. Rule 30 provides for procedure for filing appeal to the appellate authority.

Rule 33 of the Rules, 2006, relevant for the present purpose, reads as under:

â??33. Dismissal in default.-

(1)â?â?â?â?â?â? Where an appellant or his authorized representative does not appear on the date fixed for hearing on an appeal filed under rule

30 or 31, the appellate authority or the Tax Board, as the case may be, may dismiss the appeal in default.

â??(1A) An application for restoration of appeal shall be submitted to the Appellate Authority in Form VAT-32, electronically through the official

website of the Department in the matter as provided therein.â??.

(2)â?â?â?â?â?â? Where the appellant makes an application in Form VAT-32 within thirty days of the date of communication of such order, and

satisfies the authority who dismissed the appeal, that he was prevented by sufficient cause from appearing before him on the date that had been fixed

for hearing, such appeal may be restored with such conditions as may be deemed fit.â??

A perusal of the above Rule reveals that where an appellant or his authorized representative does not appear on the date fixed for hearing of an

appeal, the appellate authority or the Tax Board may dismiss the appeal in default. The provision nowhere prescribes that appeal may be decided on

merits. The provisions of Rule 33 are pari materia with the provisions of Order XLI Rule 17 CPC, which provisions were interpreted by Honâ??ble

Supreme Court in Sukhpal Singh vs. Kalyan Singh : AIR 1963 SC 146, wherein it was held that when the appellant does not address any argument, the

court is not bound to go through the materials and judgment and decide the case on merits and it was competent to dismiss the appeal for default. By

way of explanation, the said position has further been clarified in CPC by Amendment Act 104 of 1976. The said view has been reiterated by

Honâ??ble Supreme Court in Ghanshyam Das Gupta vs. Makhan Lal : (2012) 4 RLW (SC) 3470.

In view of the above discussion also and the specific power as conferred by Rule 33 of the Rules, 2006, which does not envisage decision of appeal on

merits in absence of authorized representative/appellant before the Tax Board, the judgment of the Tax Board in this regard cannot be sustained on

the said ground also insofar as the judgments in Civil Revision Nos. 125/2017 to 135/2017 are concerned, besides the determination on the subject

matter of the dispute as noticed hereinbefore.

In view of the above discussion, the revision petitions are partly allowed. The impugned judgments dated 15/12/2011 in Civil Revision Nos. 63/2012

and 64/2012, dated 28/2/2013 in Civil Revision No. 110/2013 andÂ common judgment dated 1/3/2017 in Civil Revision Nos. 125/2017 to 135/2017 are

set aside and the matters are remanded back to the Tax Board to hear and decide the appeals afresh in view of the observations made hereinbefore.

During the pendency of the revision petitions if any amount has been deposited by the petitioners pursuant to the assessment order/appellate

order/order passed by the Tax Board and/or in terms of any interim order passed by this Court, the amount deposited shall remain subject to final

outcome of the judgments to be delivered by the Tax Board after hearing the parties.

The parties shall appear before the Tax Board on 23/07/2018.

Looking to the fact that the dispute is pending since long, the Tax Board may

hear the appeals as expeditiously as possible.