(2010) 09 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 200 of 2003

Vraj Tractors Industries — APPELLANT

Vs

State of Rajasthan and another — RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (2012) 54 VST 41

Hon'ble Judges : Dinesh Maheshwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : Vinay Kothari, for the Appellant; Sundeep Bhandawat, Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an intra court appeal filed by writ petitioner of W. P. No. 917 of 1992 u/s 18 of the Rajasthan High Court Ordinance, 1949 against an order dated December 13, 2002 passed by single judge in aforementioned writ petition. By the impugned order, the learned single judge dismissed the writ petition and in consequence declined to grant the reliefs claimed by the writ petitioner in their writ petition.

2. So the question that arises for consideration in this intra court appeal is whether single judge was right in dismissing the appellant''s writ petition ?

3. At the outset, we may state that both learned counsel appearing for the parties conceded that the controversy involved in the writ petition and now carried in this appeal at the instance of writ petitioner remains no more res integra and answered in writ petitioner''s (appellant) favour by the decision of the Supreme Court reported in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, and a decision of this court rendered on the strength of law laid down in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, in the case reported in 26 Tax-Up-Date 6 - March 16-31 (2010) page

188 (Commercial Taxes Officer v. Mecson Marbles (P) Ltd.). It was stated that this court following the law laid down in these two decisions, which has full application to the undisputed facts of this case should allow the appeal by setting aside of the impugned order and in consequence allow the writ petition by issuing the necessary writ as claimed by the writ petitioner in their writ petition.

4. Since there is no dispute on facts so also the legal position which governs the issue between the parties, we do not consider it necessary to burden our judgment by taking note of any submissions and the factual issues arising in the case except those necessary for disposal of appeal.

5. The question arose before the Supreme Court in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, as to whether a purchaser of the assets from a defaulting person is liable to pay his outstanding dues (sales tax) under the provisions of the Karnataka Sales Tax Act in relation to his business which he was carrying with such assets ? Their Lordships, inter alia, ruled that before any liability is fastened upon the transferee of such defaulting person, it has to be seen as to what is actually transferred by such defaulting person to the transferee namely "fixed assets" or "running business". It was held that if it is found that what is transferred is only the "fixed assets" such as land, building, plant and machinery, then in such case, the transferee, i.e., successor-in-interest of such fixed assets would not be held liable to pay the old outstanding dues of such defaulting person (seller) in respect of his business, but if it is found that what is transferred is in effect a "running business" along with the assets by such defaulting person, then the transferee, i.e., purchaser of such business would incur the liability to satisfy the old outstanding dues of such defaulting person (seller) as if he himself is a defaulter. This issue was then examined by this court in the case of Commercial Taxes Officer v. Mecson Marbles (P) Ltd. 26 Tax-Up-Date 6 (DBSAW No. 611 of 2001) in the context of Rajasthan Sales Tax Act and finding that the provisions of the Karnataka Sales Tax Act as interpreted by the Supreme Court in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, and that of the Rajasthan Sales Tax Act are in peri materia, held :

10. Perusal of section 9(1) of the RST Act and section 15(1) of the KST Act in juxtaposition would clearly go to show that both are in peri materia with each other. In other words, section 9 of the RST Act is akin to section 15(1) of the KST Act and are almost identically worded. In these circumstances, the interpretation made by the Supreme Court in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, of section 15(1) ibid. would apply on all fours while interpreting section 9 of the R. S. T. Act. It is also for the reason that both the Acts have a common object. Indeed one change which we have noticed in their wordings is the use of expression ''entirely'' added preceding the word ''transferred'' in section 9 ibid. which does not find place in section 15 of KST Act. This expression suggests that so long as ''entire business'' of defaulting company is not transferred to the transferee, no liability can be fastened on him to pay the

unpaid tax dues of defaulting company u/s 9 ibid. In other words, section 9 lay emphasis on transfer of business in its ''entirety'' to attract the payment of tax liabilities of defaulting company by the transferee company, whereas such requirement does not find place when we read section 15 ibid.

11. In our opinion, there lies a subtle distinction between the expression ''transfer of assets'' and ''transfer of business''. In the case of former, if the assets includes transfer of running business of defaulting company, then section 9 would come in operation. In other words, liability of transferee to pay any outstanding dues of defaulting company (dealer) u/s 9 ibid. would arise only when it is found as a fact that transferee (purchaser) has purchased ''entire business of the defaulting company'', from the defaulting company either directly or in proceedings, for sale of such business under any Act.

12. Coming now to the facts of the case, it is clear from the agreement referred supra that what was transferred to respondent in the auction by corporation in section 29 proceedings was only the ''assets'' belonging to defaulting company which included ''land building, plant and machinery'' and not the business of defaulting company. It was, therefore, a clear case where ''ownership of business'' was not transferred so as to render the transferee as successor-in-interest of the transferor to pay the tax dues of transferor-company. Had it been a case of transfer of running business, then section 9 of the RST. Act would have come in operation making the transferee-company liable to discharge the transferor''s sales tax liability standing on the date of transfer. Such was not the case here.

6. Coming now to the facts of this case. It is not in dispute that the writ petitioner purchased the assets of one defaulting unit M/s. Jodhpur Auto Agric Products Ltd. in an auction conducted by the Rajasthan State Financial Corporation who took recourse to the provisions of section 29 of the State Financial Corporation Act, on March 21, 1990 for realisation of their dues from M/s. Jodhpur Auto Agric Products by sale of their unit. Consequent upon the purchase by a writ petitioner as an auction purchaser, a general demand was raised by the Industries Department by their two letters dated April 9, 1991 (annexure 6) and April 20, 1991 (annexure 7) calling upon the writ petitioner to satisfy all kinds of old outstanding dues of M/s. Jodhpur Auto Agric Products. It is these two demands which were questioned in the writ petition, out of which this intra court appeal arises by the writ petitioner (successor-in-interest), which on its dismissal gave rise to filing of this appeal.

7. In our considered opinion, when it is not disputed that what was transferred to the writ petitioner by the defaulting person through Rajasthan State Financial Corporation in auction held on March 21, 1990 was only the "fixed assets", then by necessary corollary, the law laid down in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, and Mecson Marbles (P) Ltd. 26 Tax-Up-Date 6 would apply to this case in their favour on all fours. Since the law in these two cases was laid down subsequent to the decision rendered by the single judge

in this case and hence the learned single judge did not have any occasion to decide the issue in the light of these decisions.

8. We may make it clear that we have applied the principle of law laid down in aforementioned two cases to the undisputed facts of his case because of concession made by learned counsel for the parties and secondly the learned counsel for respondent was unable to point out any distinguishable features on the facts.

9. It is for this reason and with this undisputed background, we are inclined to allow the appeal and while setting aside of the impugned demands, allow the writ petition and in consequence issue a writ of certiorari quashing annexure 6 dated April 9, 1991 and annexure 7 dated April 20, 1991 issued by the respondent No. 2. No cost.

