(2019) 01 RAJ CK 0128

In the Rajasthan High Court

Case No : Civil Writ No. 19193 Of 2018

Vs Lignite Power Pvt. Ltd — APPELLANT

Vs

State Of Rajasthan And Ors — RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(b), 4, 7(2), 7(4), 8, 9(2)
Central Goods And Services Tax Act, 2017 — Section 9
Central Sales Tax (Registration And Turnover) Rules, 1957 — Rule 12

Citation : (2019) 01 RAJ CK 0128

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Sharad Kothari, Akshat Verma, Ravi Bhansali, Apoorva Mathur, Sanjeet Purohit

Final Decision : Allowed

Judgement

Learned Counsel Shri Kothari relies upon the judgment rendered in the case of Hindustan Zinc Ltd. Vs. State of Rajasthan & Ors. : SBCWP No. 5506/2018, decided on 18.05.2018 and urges that the controversy involved in this writ petition squarely covered by the ratio of the above judgment and hence, the petitioner deserves same relief.

Though, Shri Verma, Associate to Mr.Ravi Bhansali, Sr. Advocate representing the respondent Commercial Taxes Department does not dispute the fact that the controversy involved in the case at hand is identical but he submits that the appeal has been admitted by the Division Bench of this Court against an identical judgment which was passed in relying on the judgment in the case of Hindustan Zinc Ltd. Vs State of Rajasthan & Ors.

Be that as it may. Since it is not disputed that the lis involves common controversy as the one decided by this Court in the case of Hindustan Zinc (Supra) the present writ petition deserves to be decided in light thereof. In the said judgment, the Court held as under:-

"In the present case, it is the H.S.D. and it is included in the amended definition of 'goods' and no notification under the above provisions of Section 9(2) in case of H.S.D. has been issued till date.

The remaining submissions of the learned counsel for the respondents too have been suitably dealt with in the case of Carpo Power Limited (supra) which is evident from the observations while allowing the petition as under :-

"26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of `C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of `goods' in Section 2 (d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7 (2) stipulate that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of the Act.

27. There is another aspect of the matter that the registration certificate given to the petitioner under the CST Act till date has not been cancelled. As per Section 7 (4) of the CST Act, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked.

28. In these circumstances, the writ petition is allowed. It is held that the respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form."

In the present case too, the Parliament has retained high speed diesel along with petroleum crude, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption crude which have been specifically mentioned in Section 9 of the GST Act while defining the 'goods'. Besides, the registration under Section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of Section 4 of the CST Act. Hence, this Court finds that it is obligatory duty of the respondents to issue 'C' form to the petitioner - company and any failure on the part of the respondents to do so is without any authority of law. Thus, this Court finds nothing to distinguish the case of the petitioners herein from that of the petitioner in the case of Carpo Power Limited (supra).

Accordingly, the present writ petitions are allowed in the same terms as Corpo Power Limited (supra). It is held that the respondents are liable to issue `C' Forms in respect of the High Speed Diesel procured for mining purposes through interstate trade. In the event of the petitioners having had to pay any amount on account of the respondents wrongful refusal to issue `C' Forms the petitioners shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioners in writing and the petitioners furnishing the requisite documents/form."

The writ petition is allowed in these terms. No order as to costs.