

Rajasthan Tax Board, Ajmer

Appeal No. 1732/2011/Jaipur

M/s Vectus Industries Limited,
VKI Area, Road No. - 14, Jaipur

..... Appellant

Versus

The Additional Commissioner (I.T.)
Jaipur

..... Respondent

Division Bench
RAJEEV CHOUDHARY, MEMBER
NATHU RAM, MEMBER

Present :

Mr. S.N.Asawa
Advocate for the Appellant

Sri N.K.Vaid
Advocate for the Respondent

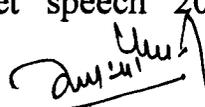
Date :12 -11-2018

JUDGEMENT

1. This Appeal has been filed before the Rajasthan Tax Board (for short , "The Board") under section 83 of the Rajasthan Value Added Tax Act, 2003 (for short , "The RVAT Act, 2003") against the order dated 17-06-2011 passed by the Additional Commissioner (I.T.), Commercial Taxes Department, Jaipur (for short, " Additional Commissioner") passed under section 36 of the RVAT Act, 2003 by which the Additioinal Commissioner determined the disputed question and held that "Blow Moulded Plastic Water Tank is not included in entry No. 195 of Schedule IV. Therefore, they are taxable at the rate prescribed in Schedule V i.e. at the rate of 14% ". Aggrieved by the above order the Assesee appellant has preferred this appeal before the Tax Borad.

2. The brief facts of the case are that the appellant assessee is a firm engaged in manufacturing of plastic water storage tank. The applicant filed an application for determination of disputed question in VAT-59. The applicant submitted that there are two process of manufacturing of plastic water storage tank, one is roto moulded and other is blow moulded and the applicant manufacturer uses the process of blow moulded. The assessee said that the raw material used in both the process is same i.e. POLY ETHYLENE and uses of the product through both the process is same i.e. storage of water. The applicant further stated that in the budget speech 2011-12 on dated

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09-03-2012 the Hon'able Chief Minister has reduced the rate of tax from 14 % to 5 % on plastic water storage tank. The applicant requested to state the rate of tax on blow moulded plastic water storage tank. The Additional Commissioner decided the disputed question of law "Rate of tax on water storage tank particularly Blow Moulded Plastic Water Tank" as follows : -

"Blow Moulded Plastic Water Tank is not included in entry No. 195 of Schedule IV. Therefore, they are taxable at the rate prescribed in Schedule V i.e. at the rate of 14% ". Aggrieved by the above order the Assessee appellant has preferred this appeal before the Tax Borad.

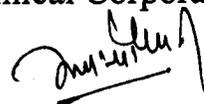
3. Heard the learned counsels for both sides.

4. The learned counsel of the appellant stated that the appellant assessee is a firm engaged in manufacturing of plastic water storage tank. There are two process of manufacturing of plastic water storage tank, one is roto moulded and other is blow moulded and the applicant manufacturer uses the process of blow moulded. The assessee said that the raw material used in both the process is same i.e. POLY ETHYLENE and uses of the product through both the process is same i.e. storage of water. The Additional Commissioner has decided the question on the basis of Notification No. F.12(25)FD/Tax/11-132 Dt. 09-03-2011 in which only roto moulded plastic storage tank has been mentioned at the entry no. 195 of schedule IV. The Advocate of the assessee further argued that in the budget speech 2011-12 on dated 09-03-2012 the Hon'able Chief Minister has reduced the rate of tax from 14 % to 5 % on plastic water storage tank. In the light of the annocement, the departmet has mentioned roto moulded plastic storage tank in the Notification but did not mentioned blow moulded plastic water tank which was due to ignorance of the concerned authorities. The aim of the Government was to encourage the storage of water, not the process by which water storage tanks are manufactured. The manufacturing process by new technologies machine is not a criteria for determination of tax rate. He further stated that every day used words should be given popular meaning. He placed reliance on the following judicial pronouncements.

I. (2003) 11 Supreme Court Cases 363 Kerla State Industrial Development Corporation Ltd. V/s Commissioner of Income Tax

II. (2007) 10 Supreme Court Cases 342 State of Uttar Pradesh and Others V/s Deepak Fertilizers & Petrochemical Corporation Ltd.

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III. (1986) 3 Supreme Court Cases 480 Atul Glass Industries Pvt. Ltd. V/s Collector of Central Excise.

IV. (2007) 7 Supreme Court Cases 242 Trutuf Safety Glass Industries V/s Commissioner of Sales Tax U.P.

V. Tax Update Vol. 9 Part 6 Page 185 State of Panjab V/s M/s Nestle India Ltd. decision dated 05-05-2004.

VI. STC Vol. 105 Page 68 MRF Limited V/s Commissionoiner of Commercial Taxes and another.

The Advocate of the apppellant requested to accept the appeal.

5. Learned Deputy Government appearing for the respondent submitted that the Additional Commissioner has decided the disputed question in the light of the notification which is as per law. He further stated that the appeal of the Assessee is liable to be rejected.

6. We have carefully gone through the arguments and perused the relevant record.

7. In the case in hands, The Additional Commissioner has decided the disputed question of law "Rate of tax on water storage tank particularly Blow Moulded Plastic Water Tank" as follows :-

"Blow Moulded Plastic Water Tank is not included in entry No. 195 of Schedule IV. Therefore, they are taxable at the rate prescribed in Schedule V i.e. at the rate of 14%".

8. Regarding the disputed question, it is relevant to mention the relevant part of the Notification No. F.12(25)FD/Tax/11-132 Dt. 09-03-2011 which is as follows :-

**GOVERNMENT OF RAJASTHAN
FINANCE DEPARTMENT
(TAX DIVISION)**

NOTIFICATION

Jaipur March 9, 2011

In exercise of the powers conferred by sub-section (5) 4 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments in Schedue IV appended to the said Act, with immediate effect, namely :-

AMENDMENTS

(viii) after the existing serial number 188, the following new serial numbers and entries thereto shall be added, namely:-

195	Roto Moulded Plastic Storage Tank	5	
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From the above notification, it is clear that at the serial no. 195 only "Roto Moudled Plastic Storage Tank" has been mentioned taxable at the rate of 5%. Additional Commissioner has decided the disputed question on the

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basis of the above notification and has held that "Blow Moulded Plastic Water Tank is not included in entry no. 195 of the schedule-IV and they are taxable at the rate prescribed in schedule-V that is at the rate of 14 %".

9. The main contention of the Appellant is that Hon'able The Chief Minister in the speech while presenting the budget on 09-03-2011 has proposed to reduce the tax on water storage tank from 14 % to 5 % and in the light of the judgement (2003) 11 Supreme Court Cases 363 Kerla State Industrial Development Corporation Ltd. V/s Commissioner of Income Tax, and Tax Update Vol. 9 Part 6 Page 185 State of Panjab V/s M/s Nestle India Ltd. decision dated 05-05-2004 the interpretation of the provisions should be made and all types of water storage tanks should be treated in the entry at s.no. 195.

10. The applicant assessee in the application under rule 73 of the VAT rules, the applicant has taken the ground of the para 288 of the budget speech dated 09-03-2011 of the Hon'able Chief Minister and this ground has not been disputed by the respondent. It is relevant to mention the relevant part of the budget speech which is as follow:-

288. राजस्थान के नागरिक पानी की कीमत समझते हैं तथा इसे सहेज कर रखते हैं। प्लास्टिक की टंकिया पानी को सहेजने के माध्यम के रूप में आज प्रत्येक घर की आवश्यकता बन चुकी हैं। अतः मैं, इन प्लास्टिक वाटर स्टोरेज टैंक पर देय कर दर 14 प्रतिशत को घटाकर 5 प्रतिशत करना प्रस्तावित करता हूँ।

Thus it is clear that the notification dated 09-03-2011 has been borne out from the budget speech of Hon'able The Chief Minister. From the budget speech, it is clear that the object of the reducing the tax rate was to encourage and facilitate the storage of water because the people of Rajasthan recognize the value of water as they face the problem of shortage of water. Thus the objective was clear and in this budget speech without any specific condition, the tax on the plastic storage tank was proposed to be reduced. It is also clear that the notification has not been made keeping in view of the objective and in the notification only "Roto Moulded Plastic Storage Tank" has been included and the benefit of reduced tax has been limited to the particular technology which was not the objective because the budget speech of Hon'able The Chief Minister was clear and simple i.e tax was proposed to be reduced on plastic water storage tank. It seems that the mistake was realised and by notification no. F.12(15)FD/Tax/12-119 dated 26-03-2012 it was corrected by substituting the expression "plastic water storage tank" in place of " Roto Moulded Plastic Storage Tank".

11. Now we analyse the above factual position in the light of the judicial pronouncements. In the judgement (2003) 11 Supreme Court Cases 363 Kerla State Industrial Development Corporation Ltd. V/s Commissioner of Income Tax, it has been held that "the Budget speech of the Minister of Finance while introducing the Finance Bill, has made the same clear. Such a

speech can be relied upon to throw light on the object and purpose of the particular provisions introduced by the Finance Bill." Similarly in the judgement STC Vol. 105 Page 68 MRF Limited V/s Commissioner of Commercial Taxes and another it has been held that - " Therefore, keeping in view the law laid down by the Supreme Court it can unhesitatingly be held that if the proposals made by the mover of the bill like those of the Finance Minister in the present case are accepted by the legislature without any demur crystallising the proposals into a legislative exercise then such speeches and proposals can be made use of as an aid in the interpretation of the statutory provisions so made. In the present case, the two budget speeches referred to above, are clearly indicative of the fact that the intention of incorporating the impugned section 6D in the Act was to levy cess only on the sale and purchases effected by a dealer in the Bangalore area." Also in the judgement Tax Update Vol. 9 part 6 page 185 State of Panjab V/s M/s Nestle India Ltd. decision dated 05-05-2004, it has been held that "In this background, the High Court held that the State Government was bound by its promise/representation made to the respondents to abolish purchase tax. According to the High Court, "the absence of a formal notification was no more than a ministerial act" which remained to be performed".

In the light of the above judgement we can say when the Hon'ble Chief Minister has announced the reduction in the tax rate on plastic water storage tank, then interpretation should be taken keeping in view the objective of the budget speech. The administrative authorities on whom the responsibility of delegated legislation is casted by the constitution should have acted according to the objective of budget speech whereas in this case it was not done according to the budget speech.

12. The another contention of the assessee is that the classification is not according to the principle of law. Now we consider this argument of the assessee. In the judgement (2007) 10 Supreme Court Cases 342 State of Uttar Pradesh and Others V/s Deepak Fertilizers & Petrochemical Corporation Ltd., It has been held that " From a perusal of the notifications in question, it is evident that other fertilisers of the NPK category i.e. NPK 12:32:16; NPK 15:15:15; NPK 20:20:0; NPK 14:35:14 are included in the exemption list, whereas it is a matter of fact that NPK 23:23:0 fertiliser is also a fertiliser of the same category, but it is omitted from the list. According to the Notification dated 02.11.1994, the intention of the State was not to tax the sale of "potassium phosphatic fertilisers" but when we go into enquiry of nomenclature of these chemical compounds, we find that NPK 23:23:0 is a "nitro-phosphate fertiliser" which has no potassium (K) ingredient. The Notifications dated 10-04-1995 and 15-05-1995 clearly include NPK 20:20:0, which is also a nitro-phosphate fertiliser with zero content of potassium (K). This classification made under the Notification dated 10-04-1995 does not hold good on the rational basis and is hence subject to scrutiny. The fact remains stagnant that the notifications include a fertiliser NPK 20:20:0 which is of the same category as that of fertiliser

NPK 23:23:0, because both are notro-phosphate fertilisers. This shows that the State has not classified the two commodities on a rational basis for the purpose of imposing tax. This Court in Tata Motors Ltd. v/ State of Maharashtra has held: (SCC p. 790, para 15)

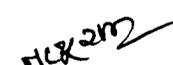
"15..... It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned, without any reason. retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality." In this judgements fertilisers of NPK category i.e. . NPK 12:32:16; NPK 15:15:15; NPK 20:20:0; NPK 14:35:14 are included in the exemption list, whereas it is a matter of fact that NPK 23:23:0 fertiliser is also a fertiliser of the same category, but it is omitted from the list. It has been held in the judgement that this classification is not on a rational basis. If we consider the case in hands in the light of the above judgement, then we see that "roto moulded plastic tank" has been included in the entry of reduced rate of tax, thus other plastic tanks have been omitted from the list of reduced rate of tax. This classification is not on a rational basis. Because both the plastic tanks i.e. blow moulded plastic tank and roto moulded plastic tank are being made from the same raw material and are used for the same purpose.

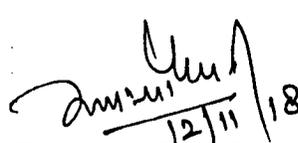
13. Thus as discussed above, we infer that as per the budget speech of Hon'able Chief Minister and in the light of the judgements (2003) 11 Supreme Court Cases 363 Kerla State Industrial Development Corporation Ltd. V/s Commissioner of Income Tax, and Tax Update Vol. 9 Part 6 Page 185 State of Panjab V/s M/s Nestle India Ltd. decision dated 05-05-2004 the interpretation of the provisions should be made and all types of water storage tanks should be treated in the entry at s.no. 195. Revenue can not create a class of goods within a class without rational basis. Also in the light of judgement (2007) 10 Supreme Court Cases 342 State of Uttar Pradesh and

Others V/s Deepak Fertilizers & Petrochemical Corporation Ltd., The classification of goods is not on rational basis and omission of other plastic water tanks from the entry of reduced rate of tax is not as per the principle of law. Thus we held that all plastic water tanks should have been included in the list of reduced rate of tax.

14. Thus appeal of the assessee is accepted and the order dated 17-06-2011 of the Additional Commissioner is set aside and it is held that blow moulded plastic water storage tank is also under the category of reduced rate of tax at the rate of 5 % prevailing at the relevant time.

15. Order pronounced.


(Nathu Ram)
Member


(Rajeev Choudhary)
Member