

## Rajasthan Tax Board, Ajmer

1. Appeal No. 1801/2013/Ajmer
2. Appeal No. 1802/2013/Ajmer
3. Appeal No. 1803/2013/Ajmer
4. Appeal No. 1804/2013/Ajmer

M/s Ramesh & Co.,  
Jatiawas, Nala Bazar, Ajmer

...Appellant

**VERSUS**

Assistant Commissioner,  
Anti-Evasion, Circle-II, Rajasthan,  
Jaipur

...Respondent

**D.B.**

**Shri K.L. Jain, Member**

**Shri Omkar Singh Ashiya, Member**

**Present:-**

Shri O. P. Maheshwari, AR

...for the Appellant

Shri Jamil Jai, Dy. Govt. Advocate

...for the Respondent

Dated:- 02/02/2018

### **JUDGMENT**

1. These four appeals have been filed by the appellant dealer (hereinafter called the "appellant") against order of the Deputy Commissioner (Adm.) Border Management and Anti-Evasion, Commercial Taxes, Jaipur (hereinafter called the 'DC'), dated 01-06-2009 whereby all the applications filed by the appellant u/s 38 of the Rajasthan Sales Tax Act, 1994 (in short the 'RST Act') read with section 34 of the Rajasthan Value Added Tax Act, 2003 (in short the 'RVAT Act') for reopening the alleged ex-parte assessment orders as passed by the Assistant Commissioner (Anti-Evasion) Circle-II, Rajasthan, Jaipur (hereinafter called the assessing officer or 'AO') dated 13-08-2007, were rejected. Since all the four appeals involve a common issue and have common facts and circumstances, therefore, these are disposed off by a common order, a copy of which shall be placed on each case file separately. The details of the DC's orders, assessment orders and demand created therein is as follows:





Appeal No.	Date of the DC's order under challenge	Assessing Authority's order details						
		Assessment year	Evaded Turnover	Tax	Surcharge	Interest	Turnover Tax	Penalty
1801/2013	01.06.2009	2001-02	7854858	972583	141387	953040	3000	2167940
1802/2013	01.06.2009	2002-03	15882917	1905950	285892	1495175	7200	4383685
1803/2013	01.06.2009	2003-04	31912571	3829508	574426	2211542	10000	8807868
1804/2013	01.06.2009	2004-05	(12%)8742294 (14%)36002447	1049075 5040342	157361	1847758	21856	12493556

2. Briefly stated, the facts of the case are that on the basis of an enquiry conducted on some of the firms situated outside the State which were found to have sold goods to various dealers of the State, including the appellant, the Anti-evasion authorities conducted a survey on 03.09.2005 at business premises of the appellant and seized some record alleged to be unaccounted for in regular books of accounts on being suspected to be a case of evasion of tax. Based on the enquiry so conducted, the Anti-evasion authorities also made further enquiries from the various dealers who bought goods from the appellant and found some incriminating evidence against the appellant on the basis of information furnished by such dealers which contained details of the bills and payments etc.
3. On verification of this information with the seized books of accounts/record of the appellant, the transactions were not found entered in his regular books of accounts. The enquiry officer also found that payment from such buyers were made partly in cash and some through cheque or DDs deposited in appellant firm's bank accounts. Not only this, some payments were directly made to some manufacturers of glass like M/s Triveni Glass Ltd, Allahabad/New Delhi, M/s Saint Gobain India Ltd, Chennai and M/s Gopal Glass works, Ahmedabad etc.
4. It was also found by the enquiry officer that the appellant had submitted the tax return in form VAT-5B declaring all the turnover as 'Tax Paid' and the turnover so declared was much lesser than what actually was found by the AO on the basis of enquiries made so far. Accordingly, notices were issued u/s 30,58 and 65 of the RST Act, 1994 and after so many appearances of the AR for the appellant and repeated adjournments sought by him, the case was again adjourned on 15.03.2007 for 24.03.2007 and no one appeared on that day nor






any request was received by AO to adjourn the matter, then on 24.03.2007 the order was reserved by AO and finally the orders were passed afterwards.

5. Aggrieved by the assessment orders for all the four assessment years, separate applications were submitted before the DC u/s 38 of the RST Act r.w. section 34 of the RVAT Act, to quash the alleged ex-party orders, seeking instruction for assessing authority to pass fresh orders after giving proper opportunity of hearing but the applications were rejected by him. Hence, these appeals by the appellant.
6. Initiating the arguments, learned counsel for the appellant argued that DC has not appreciated the facts and circumstances of the case and rejected the applications for re-opening the assessments. He further submitted that assessee should not suffer for mistake or negligence of the Advocate or Authorized representative (AR) and referred judgment of the Hon'ble Supreme Court in Refique Vs Munshilal (AIR 1981 SC 1400), Rajasthan Tax Board appeal decisions in the matters of Sarswa Construction co. Vs DC (Admn) in appeal no. 1234/2014/Bikaner and that of HB Furniture House Vs AC in appeal no. 424/2014/Ajmer, dated 22.08.2017. He further said the DC did not decide his application for over two years period and finally rejected without giving him proper opportunity of being heard, so he requested to set aside the orders u/s 34 passed by the DC and that AO be directed to hear the matter afresh after affording due opportunity. He further argued that he had submitted all the reasonable causes which prevented him to appear before the AO but the DC rejected all the applications u/s 34 and deprived him of justice thereto.
7. The learned Deputy Government Advocate appearing for the Revenue supported orders of the DC as well as the AO and stated that the appellant despite his several appearances, was not willing to submit his reply, to avoid creation of demand for evasion of tax done by him. He further submits that AR of the Appellant appeared several times before the AO and every time he sought adjournment and last adjournment was given for 24.03.2007 on his request only and he did not turn up that day, then the AO had no option but to reserve the cases for orders. He also submitted that the facts and







circumstances of the referred cases were different from the present one, therefore, those are not applicable. He, therefore, requested to dismiss the appeals

8. Heard the learned counsel for both the parties and perused the relevant record.
9. The Deputy Commissioner while disposing off the applications u/s 38 of the RST Act, 1994 r.w. section 34 of the RVAT Act, 2003 has mentioned that Shri V.K. Pareek, Advocate appeared before the AO on behalf of the appellant on 04.01.2007, 12.01.2007, 02.02.2007, 12.02.2007, 21.02.2007 and 15.03.2007. On 15.03.2007 on request of the AR for the appellant, next date was given for 24.03.2007 and no one appeared on that date nor any adjournment was sought. DC has further held that in-fact this is not a case of ex-parte order because the appellant was given multiple opportunities to defend him or to put forth his arguments, but he did not avail that opportunity. Thus, he has not found any merit in the applications to re-open the case and rejected the same.
10. We have carefully perused the relevant record of the AO too, and find that the AO has given ample opportunity to the appellant to put forth his defence and to rebut or to controvert the findings of the enquiry. AO has generously granted adjournment on request of the AR for the appellant and on one such occasion, as noted on order sheet dated 12.01.2007, the adjournment has been sought telephonically and still the AO granted further date for 02.02.2007, so this argument does not hold any ground that the appellant was not given due opportunity of being heard.
11. On perusal of the AO's files it is found that first such notice was issued to the appellant on 20.04.2006 for hearing on 05.05.2006 and thereafter too, several notices have been issued to the appellant, and authorized representative (AR) has appeared before the AO on 04.01.2007, 02.02.2007, 12.02.2007, 15.03.2007 but the AR has sought adjournment for one reason or another. On 15.03.2007 the AO granted last such adjournment and directed to place the matter for final hearing on 24.03.2007, but no one appeared on that day nor any request for adjournment was received by the AO, so as per noting on the order sheet at 24.03.2007, the matter was reserved for orders on that day and finally the order was passed afterwards,

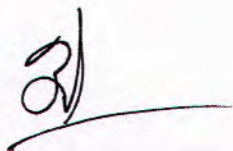






i.e. for the year 2001-02 on 26.03.2007 and for the years 2002-03, 2003-04 and 2004-05 on 02.06.2007.

12. It appears from the record that appellant avoided the whole proceeding to be materialized, by seeking adjournments or merely advancing technical objections and at times even tried to restrain or dissuade the AO from finalizing the case by making frivolous complaints against him and to make request before the Additional Commissioner to transfer his case to another officer, but never tried to controvert the findings as arrived against him in the enquiry. He has not bothered to file a single reply to rebut the findings of fact, despite being given numerous opportunities by the AO.
13. There emerges a similar pattern on part of the appellant, regarding appearances before the AO as well as the DC. As before the AO, the authorized representative of the appellant appeared several times and, on every occasion, instead of furnishing any reply to the notices simply seeks adjournment and on final adjournment when the final hearing is likely to be concluded, he refrains from attending the proceedings. So, it can not be said that the orders have been made *ex-parte*. In fact, the appellant was given more than sufficient opportunity to be heard, but he failed to submit any reply or controvert finding of the enquiry, therefore, the AO was left with no option but to decide the cases to the best of his judgment. It would be befitting to say that it was not an *ex-parte* order *per se* but a best judgment assessment. We, therefore, arrive at a considered finding of fact that the appellant was given sufficient opportunity of being heard but it chose deliberately not to avail the same, or perhaps did not have any material to controvert the facts as found in the enquiry.
14. Even before the DC, in hearing of his application to re-open the cases, the AR for the appellant appeared several times i.e. on 04.11.2008, 08.12.2008, 12.01.2009, 02.02.2009 and each time adjournment has been sought by the AR and looking into this tendency of the appellant the DC in his note sheet dated 02.02.2009 has categorically mentioned that enough time has been given earlier, so the case be fixed for final hearing on 24.02.2009. This noting is reproduced as follows: -





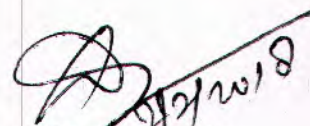
" 2.2.09 व्यवहारी के अधिकृत प्रतिनिधि श्री दिलीप शर्मा उपस्थित।  
वे सुनवाई हेतु समय चाहते हैं। पूर्व में काफी समय दिया  
गया है। अतः प्रकरण अंतिम सुनवाई/बहस हेतु दिनांक  
24.02.2009 को पेश हो।

Sd-  
DC(Adm) BM & AE"

15. So, on closely perusing the proceedings at the level of both the lower authorities, it is found that a conscious, deliberate and an identical pattern emerges where the AR keeps on appearing on the hearing dates but refrains from arguing the case or to submit his reply, and sought repeated adjournments, and after the last such adjournment does not appear for final hearing.
16. So far as the various judgments as referred by appellant are concerned, in these cases the advocate of the petitioner could not appear for any reason and in such circumstances the Hon'ble Courts or the Tax Board thought it proper to re-open the case, but in the instant matter the AR for the appellant has appeared several times and instead of filing any reply sought adjournment on each occasion, so the facts and circumstances of the present case are different from those referred by the appellant, therefore, with great regard to the Hon'ble Courts referred above, these judgments can't be applied in the instant matter.
17. In light of the above discussion, we arrived at a considered view that the AO has finalized the assessment orders after affording sufficient opportunity of being heard to the appellant, who in turn deliberately and consciously chose and avoided to submit reply or controvert the findings of the enquiry and instead sought adjournments only, therefore, the DC, in light of the facts and circumstances, was justified to reject the applications to re-open the cases.
18. Accordingly, the orders of the DC dated 01.06.2009 are confirmed and present appeals being devoid any merit, are dismissed.
19. Order pronounced.



(Omkar Singh Ashiya)  
Member

  
(K. L. Jain)  
Member