

Rajasthan Tax Board, Aimer

Appeal No. 2122/2010/Banswara

M/s Banswara Syntex Ltd.,
Banswara

Appellant

VERSUS

1. Commercial Taxes Officer,
Banswara
2. Deputy Commissioner (Appeals),
Commercial Taxes, Udaipur

Respondents

D.B.

SHRI MADAN LAL MALVIYA, MEMBER
SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri M.L. Patodi, Advocate
Shri Ram Kishore Khadav,
Dy. Govt. Advocate

for Appellant

for Revenue

Dated : 04/10/2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant") against order of the Deputy Commissioner (Appeals), Commercial Taxes, Udaipur (hereinafter called the "appellate authority") who vide his appellate order dated 15.07.2010, has upheld the order of the Commercial Taxes Officer, Circle Banswara (hereinafter called the "assessing officer" or "AO") dated 26.03.2009 passed under section 9(2) of the Central Sales Tax Act, 1956 (hereinafter called the "CST Act").
2. Brief facts leading to the present appeal are that the appellant is a manufacturer of synthetic and acrylic yarn and sells the same within State; in the course of interstate trade or commerce; in the course of export; and also consigns the goods as branch transfer to its branches/depots situated out of the State or stock transfers to the consignment agents for sale outside the State (SOS). The State Government, so as to encourage the interstate sale of goods with commensurate reduction in the branch transfers, allowed partial exemption



vide notification no. F.4 (72) Gr.-IV / 81-18 dated 06.05.1986. The maximum permissible partial exemption was upto 75% of the tax payable by the dealer. For the assessment year 2006-07, the appellant claimed a partial exemption of Rs. 54,78,724/- on the basis of vertical increase in the interstate sale but the assessing authority calculated this partial exemption on the basis of increase in the interstate sale commensurate with reduction in branch transfer and allowed the reduced quantum in the assessment order dated 26.03.2009 as passed u/s 9 of the Central Sales Tax Act, 1956. Accordingly, an apparent dispute arose about the disallowance of partial exemption amounting to Rs. 15,00,106/- .

3. Being aggrieved of the assessment order, the appellant preferred appeal before the appellate authority who vide his order dated 15.07.2010, confirmed order of the assessing authority and rejected the appeal. Against this appellate order, the appellant has preferred Appeal u/s 83 of the RVAT Act, before the Rajasthan Tax Board.
4. Learned counsel for the appellant submits that the applicant company has rightly claimed the partial exemption in light of the notification dated 06.05.1986 but the assessing authority has not accepted the same and reduced the quantum of the entitlement. He referred a judgment of the Rajasthan Taxation Tribunal, Jaipur in the case of M/s Manglam Cement Ltd Vs CTO: STR No. 329/1996, order dated 03.03.1998.
5. Learned Deputy Government Advocate appearing for the respondent-Revenue submits that as per the assessment order, the AO has rightly calculated the amount of partial exemption and that in appellant's own case the learned Single Bench of the Rajasthan Tax Board has decided a similar matter against him (Appeal No. 1586/2002/Banswara, date of

order being 19.12.2003), therefore, the appeal deserves to be dismissed.

6. We have gone through the submissions of both the parties and perused the relevant record. The notification dated 06.05.1986 is as under:

"F.4(72) FD/Gr.-IV/81-18 (S.O. 23) dated 06th May, 1986

In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sale Tax Act, 1956 (Central Act 74 of 1956), the State Government on being satisfied that it is necessary so to do in the public interest in supersession of the Finance Department Notification No. F.4(72)FD/Gr.-IV/81-36 dated December 3, 1985, hereby directs that with immediate effect, any dealer, having his place of business and manufacturing goods in the State of Rajasthan, may claim partial exemption from the tax payable in respect of the sales by him of such goods in the course of inter-State trade or commerce by way of reduction at the rate of 50% of the tax so payable on increased sales up to 50% and at the rate of 75% of the tax so payable on increased sales made over and above the aforesaid 50%. In the manner and subject to the conditions as follows-

(1) Such reduction of tax shall be allowed to a dealer only after and in respect of the increase which is effected in the percentage of the quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter-State trade or commerce and despatched to Head-Office, Branch-Office, Depot or agent outside the State for sale outside the State, during any accounting year as against such percentage during the accounting year 1984-85.

(2) In the case of a dealer who commenced the manufacture of goods in the State of Rajasthan after the end of the accounting year 1984-85, the average of the aforesaid percentages in respect of the other manufacturers in the State in the relevant industry during the accounting year 1984-85, calculated and determined by the assessing authority with the approval of the Commissioner shall be deemed to be the percentage in respect of such dealer for the accounting year 1984-85.


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(3) The increase effected in the percentage, as referred to in clause (1) above in respect of the sales in the course of inter-State trade or commerce to be considered shall be limited to the extent of the decrease in the percentage in respect of despatch of goods to Head-Office, Branch-Office, depot or agent outside the State for sale outside the State, during the relevant accounting year as against such percentage during the accounting year 1984-85 and

(4) No claim for such reduction of tax shall be allowed in respect of levy cement."

7. The figures of sales within State, interstate sale and branch transfer in quantity terms in base year and those for the year 2006-07, and increase/decrease in percentage terms are arrived at as under :-

Synthetic Blended Yarn:

Period	Sale within State (Kgs. / %)	Inter-State Sale (Kgs. / %)	Branch Transfer (Kgs. / %)	Total Quantity (Kgs. / %)
1984-85 (Base year)	128069 (7.12%)	364011 (20.24%)	1306068 (72.63%)	1798148 (100%)
2006-07 (Assessment year)	2829114 (32.23%)	5241831 (59.71%)	707979 (8.06%)	8778924 (100%)
Increase/decrease in relation to the base year	(+) 25.10%	(+) 39.47%	(-) 64.51%	

Acrylic Yarn:

Period	Sale within State (Kgs./ %)	Inter-State Sale (Kgs. / %)	Branch Transfer (Kgs. / %)	Total Quantity (Kgs. / %)
Base Year	659 (0.64%)	28474 (27.54%)	74245 (71.82%)	103378 (100%)
2006-07 (Assessment year)	0	253652 (100%)	0	253452 (100%)
Increase/decrease in relation to the base year	(-) 0-64%	+ 72.46%	(-) 71.82%	

8. After going through the notification dated 06.05.1986, specially on conjoint reading of clause (1) and (3) of the said notification, this can safely be concluded that the reduction of

tax is allowed only in respect of the increase which is effected in percentage of quantum of goods sold in the course of inter-State trade or commerce, for which the outer limit is to the extent of the decrease in percentage terms of the goods despatched to HO/BO/depot or the consignment agent outside the State. **It explicitly means that:**

- (i) if the quantum of increase in percentage terms of the goods sold as inter-State sale is higher vis-a-vis the decrease in percentage terms of the goods sent as depot transfer or for sale on consignment basis, then the benefit would be restricted to the percentage of decrease in branch transfers; and
- (ii) if the quantum of increase in percentage terms of the goods sold as inter-State sale is lower vis-a-vis the decrease in percentage terms of the goods sent as depot transfer or for sale on consignment basis, then the benefit would be confined to the percentage of increase in the interstate sale.


***Illustration:** if in the base year, the interstate sales (I.S.S.) were to be 100 MT and branch transfers were also 100 MT, but in the relevant assessment year the I.S.S. is 180 MT (increase of 80%) and branch transfer is 50 MT (decrease of 50%), then the partial exemption would be restricted to the increase of 50% of I.S.S. only. **Conversely,** if in the base year the interstate sales (I.S.S.) were to be 100 MT and branch transfer were also 100 MT, but in the relevant assessment year the I.S.S. is 145 MT (increase of 45%) and branch transfer is 45 MT (decrease of 55%), then the partial exemption would be restricted to the increase of 45% of I.S.S. only.*

9. In light of the propositions as set out above, it is held that for 'Synthetic Blended Yarn', by taking into consideration the increase in the inter State sale at 39.47% and the decrease in branch transfers at 64.57%, the entitlement for partial exemption shall be calculated on the basis of 39.47% increase. Likewise, in case of 'Acrylic Yarn', by taking into consideration the increase in interstate sale at 72.46% and simultaneous

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decrease in branch transfers at 71.82%, the partial exemption benefit shall be available on 71.82% basis. Since, the AO has rightly taken these figures of 39.47% and 71.82% respectively for the purpose of calculation of partial exemption, and appellate authority too has correctly upheld the calculation methodology followed by the AO, therefore, we do not find any error in orders of authorities below and the appeal is found to be devoid of any merit and substance, hence the same deserves to be dismissed.

10. The learned Advocate for the appellant has referred a judgment of the Hon'ble RTT dated 03.03.1998, but facts of that case are different from the present one, therefore, the that judgment can't be applied here. On the contrary, the judgment referred by the revenue, which was delivered in appellant's own case (in Appeal No. 1586/2002/BSW, dated 19.12.2003 RTB-SB) having the similar facts, squarely applies in the instant case.
11. Resultantly, the orders of the lower authorities are confirmed, and the present appeal is rejected.
12. Order pronounced.


04.10.2018

(OMKAR SINGH ASHIYA)
Member


(MADANLAL MALVIYA)
Member