

Rajasthan Tax Board, Ajmer

Appeal No. 265/2013/Jodhpur

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Commercial Taxes Officer,
Circle-C, Jodhpur

...Appellant

VERSUS

M/s National Steel Industries,
F-146, MIA, IInd Phase, Basni
Jodhpur

.....Respondent

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri D.P. Ojha,
Dy. Govt. Advocate

for Appellant

Shri Rajendra Jain,
Advocate

for Respondent

Dated : 24.04.2018

JUDGMENT

1. These appeals have been filed by the appellant Revenue (hereinafter called the "appellant"), against orders of the Deputy Commissioner (Appeals)-I, Commercial Tax Department, Jodhpur (hereinafter called the "appellate authority") dated 31.08.2012, who has accepted the appeals against the assessment orders passed by Commercial Taxes Officer, Circle-C, Jodhpur (hereinafter called the "assessing officer" or "AO") dated 29.03.2012, under section 9 of the Central Sales Tax Act, 1956 (hereinafter called the "CST Act"). The details of the Appellate orders as well as the AO's orders, are as under:



Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Officer's order Details		
		Appeal No.	order dated	order dated	disputed Tax	disputed interest
265/2013/Jodhpur	2009-10	22/CST/JUC/12-13	31.08.2012	29.03.2012	683118	184442
266/2013/Jodhpur	2009-10	23/CST/JUC/12-13	31.08.2012	29.03.2012	42151	11381
267/2013/Jodhpur	2009-10	24/CST/JUC/12-13	31.08.2012	29.03.2012	673970	181972

2. Brief facts leading to the present appeals are that the appellant is a manufacturer of stainless steel flats (S.S.Flats) and during the year 2009-10 has made inter-state sales to some Maharashtra dealers against the declaration form 'C'. The Assessing officer rejected the 'C' forms submitted by respondent as the registration of the purchasing dealers were cancelled retrospectively by the Maharashtra authorities and accordingly the 'C' forms as issued by those dealers were also cancelled.
3. Aggrieved of the assessment orders, the appellant preferred appeals before the appellate authority who set aside the levy of additional tax & interest and accepted the appeals.
4. The learned deputy government advocate appearing for the appellant submits that the registrations of the Maharashtra dealers were cancelled by the authorities there and the 'C' forms issued by them were also cancelled. So, the AO was justified to levy the additional demand of tax and interest by rejecting the 'C' forms issued by those firms. He further requests to set aside the appellate orders and to restore the order of the assessing officer.
5. Per contra, the learned advocate appearing for the respondent submits that registration of the purchasing dealers was very much valid at the time of issuance of the 'C' forms, but the Maharashtra authorities cancelled these registrations retrospectively and also cancelled the 'C' forms issued by such dealers. He further submits that in similar matters the Rajasthan

Tax Board has rejected appeals of the department, these cases being :-

1. Asstt. Commissioner Vs. M/s Navkar Metals, Jodhpur
Appeal No. 2288/2012/Jodhpur D/o 18.03.2014
2. Asstt. Commissioner Vs. M/s National Metal, Jodhpur
Appeal No. 482-485/2013/Jodhpur D/o 02.03.2017

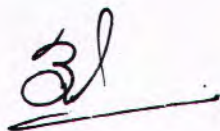
He also referred a judgement of the Hon'ble Supreme Court in the matter of State of Maharashtra Vs. Suresh Trading Company, in Civil Appeal No. 1506/1982, order D/o 07.02.1996 [(1998) 109 STC 439] wherein it has categorically been held that if any registration is cancelled retrospectively then it can have no effect upon any person who has acted upon the strength of registration certificate when the same was valid. He therefore, requests to reject the appeals of the revenue.

6. I have carefully gone through the submission from both the parties and perused the relevant record. The issue involved in these appeals pertains the inter-state sales supported by the requisite the declaration form 'C', where upon an inquiry it was found that the registration certificate of the purchasing dealer was retrospectively cancelled by the Maharashtra authorities. The details of the purchasing dealers, 'C' form issued by them and cancellation orders of RC as well as the 'C' forms, is as under:-

Sr. No.	Year/ Quarter	Name of the Purchasing dealers	TIN	C form No. & date of issue	Registration cancelled on /w.e.f.	C forms cancelled on
1	2	3	4	5	6	7
1.	2009-10 Ist Qtr	M/s Hitech Impex	27370682867C	MH 09 960137 07.10.2009	24.08.2010 w.e.f. 21.11.2008	31.01.2011
2.	2009-10 IInd Qtr	M/s Hitech Impex	27370682867C	MH 09 1504627	24.08.2010 w.e.f. 21.11.2008	31.01.2011
		M/s Mercury Enterprises	27450698246C	MH 09 1655622 31.03.2010	cancellation date not given in AO's order. cancellation w.e.f. 03.03.2009	date not available on AO's record
3.	2009-10 IIIrd Qtr	M/s Mercury Enterprises	27450698246C	MH 09 1655636 31.03.2010	cancellation date not given in AO's order. cancellation w.e.f. 03.03.2009	date not available on AO's record

Though the AO has wrongly clubbed both the 'C' forms issued by M/s Mercury Enterprises into the IIIrd quarter of the year and created the additional demand in this quarter only, whereas the form no. 1655622 belongs to the second quarter and form no. 1655636 belongs to the third quarter.

7. It transpires from the above table that the 'C' forms in question were issued when the registrations of the said firms were still very much prevalent and valid in the State of Maharashtra. The Maharashtra authorities though cancelled the registration retrospectively, i.e. from the effective date of registration, but prior to that action these 'C' forms were issued by the department itself. It is also a well known fact that unlike the practice as prevalent in many States about issuance of the 'C' forms where these were generated or filled by the purchasing dealer himself, whereas in the State of Maharashtra the C forms were issued by the department itself from its Central Repository and such forms bear the name and signature of the issuing Inspector. So, it can be safely concluded that at the time of issuance of these forms the same were very much valid and issued after due inquiry as per the practice prevailed in that State.
8. The Hon'ble Supreme Court in the matter of the State of Maharashtra Vs. Suresh Trading Company [(1998) 109 STC 439] has categorically held that when registration of a dealer is in prevalence and any declaration form is issued by him and later the registration is cancelled retrospectively, it can have no effect upon any person who has acted upon the strength of a registration certificate. Though this was juxtapose the case where the purchaser bought some goods on strength of a declaration and seller's registration was cancelled



retrospectively. The relevant paras of the said judgement are reproduced here under :-

"5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to notify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.

6. It must also be noted that the learned Advocate General, appearing for the department before the High Court, stated that the genuineness of the transactions between the registered dealer and the respondents was not in doubt and not disputed. This being so, it is difficult to see how there could have been a cancellation of registration with effect from a date that preceded the dates of the transactions and how, accordingly, the respondent could be made liable to pay tax."

9. In a similar matter, the Hon'ble Delhi High Court in the case of Jain Manufacturing (India) Pvt. Ltd. Vs. The Commissioner Value Added Tax and Ors. judgement dated 01.06.2016 (2016) 93 VST 326 (Delhi), has held as under :-

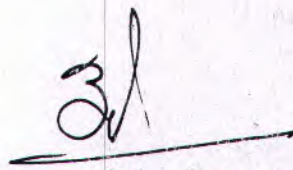
"27. To answer the problem highlighted by Mr. Narayan, the best course of action would be for an authority to cancel the CST registration prospectively and immediately place that information on its website. In such event, there would be no difficulty in the selling dealer being able to verify the validity of the CST registration of the purchasing dealer. However, where the cancellation of the registration and, consequently of the C-Form is sought to be done retrospectively, it would adversely affect the rights of bonafide sellers in other states who proceeded on the basis of the existence of valid CST registration of the purchasing dealer on the date of the inter-se sale. That outcome is not contemplated by the CST Act and the Rules thereunder."

10. Apart from the above judgements, the Rajasthan Tax Board has also decided the similar issue in Appeal no. 2288/2012/Jodhpur



Asstt. Commissioner Vs. M/s Navkar Metals, Jodhpur, order dated 18.03.2014 and in Appeal No. 482-485/2013/Jodhpur Asstt. Commissioner Vs. M/s National Metals, Jodhpur, order dated 02.08.2017, and has held that when the declaration forms were issued by the competent authority and the registration of the purchaser firm was cancelled retrospectively, then the benefit of concessional rate of tax can't be denied to the selling dealer.

11. Under the facts and circumstances of the case and in light of the judicial pronouncements as referred above, it is held that the benefit of concessional rate of tax cannot be denied to the respondent because the C forms as issued to him by the Maharashtra dealer were very much valid at the time of its issuance by the departmental authorities, because the registrations of the purchasing dealers were cancelled thereafter, albeit with retrospective effect. Therefore, the appellate authority has not committed any mistake in accepting appeals of the respondent, hence the impugned appellate orders deserve to be upheld.
12. As discussed in the foregoing paras, the impugned appellate orders are confirmed and appeals of the revenue are disallowed.
13. Order pronounced.


24.04.2018
(Omkar Singh Ashiya)
Member