

Rajasthan Tax Board, Aimer

Appeal No. 1034/2010/Jaipur

M/s Neha Creations
C-6, Dwarikapuri,
Jamna Lal Bajaj Marg,
C-Scheme, Jaipur

...Appellant

VERSUS

Commercial Taxes Officer,
Circle B, Jaipur

.....Respondent

D.B.

SHRI MADAN LAL MALVIYA, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Ajay Rastogi, Advocate

for Appellant

Shri Ramkaran Singh,
Dy. Govt. Advocate

for Respondents

Dated : 18/01/2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant"), against order of the Deputy Commissioner Appeals-V, Commercial Tax Department, Jaipur (hereinafter called the "appellate Authority") who partly accepted the appeal against order of the Commercial Taxes Officer, Circle B, Jaipur (hereinafter called the "assessing authority") passed under Section 29(7), 58 and 61 of the Rajasthan Sales Tax Act, 1994 (hereinafter called the "Act") dated 29.03.2008, wherein tax Rs. 15,84,479/- and interest Rs. 4,47,150/- was imposed on sale of 'digital decoders' etc.

2. Brief facts leading to the present appeal are that the appellant is in the business of providing necessary devices for receiving digital signal for television viewing and in the course thereof provides Digital Decoders, popularly known as 'set-top box' and accessories to its dealers/customers. During the year 2005-06, the Digital Decoders and accessories thereof were given to the dealers/customers and some amount was received as security deposit and lease money and tax was





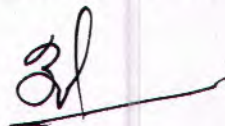
paid on lease money component. However, the assessing authority found that the said goods were neither taken back nor exchanged afterwards, so these were in fact sold by the appellant to its dealers/customers on which no tax was paid. The assessing authority, therefore, imposed tax amounting to Rs. 15,85,008.00/- and interest of Rs. 4,47,150.00.

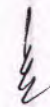
3. Aggrieved of this imposition the appellant preferred an appeal before the appellate authority who upheld the levy of tax and interest by order dated 29.12.2009.

4. The learned advocate appearing for the appellant submits that the appellant is a distributor of Digital Decoders popularly known as 'set top boxes' and paying leasing tax on amount received from next stage dealers/customers against setting up of digital decoders. However, the assessing authority did not accept it as a lease transaction and termed it as a transaction of sale and accordingly levied tax and interest thereupon. He further submitted that in similar matters, the Hon'ble Rajasthan High Court as well as the Rajasthan Tax Board have remanded back the matter to assessing authority for determination *de-novo*. He referred the following judgments:

1. M/s. Ronak Distributors (P) Ltd. V/s CTO, S.B. Civil (VAT) Revision Petition No. 179/14, D/o 14.01.2015 (RHC).
2. M/s Narendra Motors V/s CTO, Appeal No. 2644/2011/Hanumangarh (RTB)

5. Learned Deputy Government Advocate appearing for the respondent supported order of the assessing authority and submitted that the assessing authority has arrived at a conclusion that appellant brought the digital decoders and its accessories on stock transfer basis from out of the State and subsequently shown it to be given on lease and 4% tax on this lease amount was collected and deposited. However, no lease agreement or lease deed as such was found to have been prepared amongst the parties. The appellant simply prepared a dispatch memo/invoice for its customers and shown it as a lease agreement. The assessing authority further found that the appellant has done outright





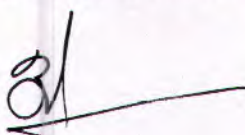
sale of Digital Decoders and Viewing Cards which is taxable @ 12% but collected and deposited 4% tax on a small portion of receipts i.e. lease money.

6. We have gone through the submission of both the parties and perused the relevant record. The subject matter of both the judgments cited by the appellant are identical wherein the petitioner/appellant were doing the business of Dish Antenna, V.C. Cards etc. and these goods were mounted on roof top of the customers to receive the digital signal for television viewing. In these matters, the Hon'ble Rajasthan High Court as well as the Tax Board have remanded the matters back to the assessing authority for passing assessment order afresh after giving reasonable opportunity of being heard to the assessee and it was also directed to re-examine the matter and decide the issue relating to supply of dish antenna and digital decoders by the respective dealers as to whether the said transaction is a "lease" or a "sale".

7. One intriguing fact noticed in the assessment order is that the assessing authority has initially proposed to levy tax on supply of digital decoders etc., valuing Rs. 23,45,520/- and notice to that purpose is stated to have been issued (though no such notice is available on the file), but the tax has been imposed on an alleged sale amount of Rs. 1,32,03,990/-. The relevant portion of the assessment order is reproduced hereunder:-

“व्यवहारी के अधिकृत प्रतिनिधि श्री रस्तोगी द्वारा उक्त जाँच लेखा पुस्तकें एवं M/s Essal Agro Pvt. Ltd. & ASC Enterprises Ltd. से प्राप्त माल की विगत पेश की गई। जिनके अनुसार फर्म ने रु. 1,08,58,470.00 के डिजीटल डिकोटर एवं ऐसेसरीज का आयात किया है एवं इस माल के विक्रय के पेटे रु. 23,45,520.00 का प्रतिफल प्राप्त किया है। इस प्रकार फर्म ने रु. 1,32,03,990.00 के डिजीटल डिकोटर एवं ऐसेसरीज का विक्रय किया है जो कि 12 प्रतिशत की दर से कर योग्य है।

उपरोक्त कारणों से यह सिद्ध होता है कि रु. 23,45,520.00 के डिजीटल डिकोटर एवं ऐसेसरीज सैट्स का विक्रय किया गया है जो कि 12 प्रतिशत की दर से कर योग्य है।”

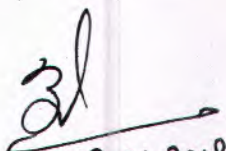


When the assessing authority did arrive at a finding that appellant has received a consideration of Rs. 23,45,520/- and further held that this amount is taxable @ 12%, then the imposition of tax on Rs. 1,32,03,990/- remains unexplained. For imposition of tax on a turnover well over rupees one crore, it won't suffice to merely say that "the firm has imported the digital decoders and accessories valuing Rs. 1,08,58,470/- and received consideration of Rs. 23,45,520/- against sale of these goods, therefore, the firm has sold these goods valuing Rs. 1,32,03,990/- which is taxable @ 12%." When as per assessing authority's own version the valuable consideration as received by the appellant firm is Rs. 23,45,520/-, then how come he levied of tax on a turnover of Rs. 1,32,03,990/-. Thus, the assessment order is found to be 'cryptic' on this issue.

8. In light of the above referred judgments and the material facts as mentioned in the foregoing paras, the matter is remanded back to the assessing authority to examine the matter and decide the issue afresh relating to supply of digital decoders & accessories etc. to its dealers/customers, as to whether the said transaction is a transaction of 'lease' or a 'sale' and also to re-determine the quantum of sale thereof and finalize the assessment accordingly.

9. Resultantly, the impugned appellate order is set aside and matter is remanded back to the assessing authority.

10. Order pronounced.


18.01.2018

(Omkar Singh Ashiya)
Member



(Madan Lal Malviya)
Member