राजस्थान कर बोर्ड, अजमेर

अपील संख्या – 1158/2013/कोटा.

मैसर्स दामोदर टेक इन्टरनैशनल प्रा0 लिमिटेड,
कोटा. .....अपीलार्थी.

बनाम

वाणिज्यिक कर अधिकारी,
वर्क्स कॉन्ट्रेक्ट एण्ड लीजिंग टैक्स, कोटा. .....प्रत्यर्थी.

खण्डपीठ
श्री खेमराज, अध्यक्ष
श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री वी. के. पारीक, अभिभाषक .....अपीलार्थी की ओर से.
श्री अनिल पोखरणा,
उप–राजकीय अभिभाषक .....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 03/10/2016

निर्णय

1. यह अपील अपीलार्थी व्यवहारी ने उपायुक्त (अपील्स), वाणिज्यिक कर विभाग, अजमेर कैम्प–कोटा (जिसे आगे **'अपीलीय अधिकारी'** कहा जायेगा) के अपील संख्या 86/वैट/11–12/कोटा में पारित किये गये आदेश दिनांक 29.01.2013 के विरूद्ध प्रस्तुत की गई है। अपीलीय अधिकारी ने उक्त आदेश से वाणिज्यिक कर अधिकारी, वर्क्स कॉन्ट्रेक्ट एण्ड लीजिंग टैक्स, कोटा (जिसे आगे **'कर निर्धारण अधिकारी'** कहा जायेगा) के आदेश दिनांक 14.12.2011 के विरूद्ध को अस्वीकार किया है। कर निर्धारण अधिकारी द्वारा पारित आदेश में मुक्ति शुल्क की दर 3 प्रतिशत से निर्धारित करते हुए मुक्ति शुल्क प्रमाण पत्र जारी किया गया है, जिसकी अपीलीय अधिकारी द्वारा पुष्टि की गयी है, जिसे इसे अपील में विवादित किया गया है।

2. प्रकरण के संक्षेप में तथ्य इस प्रकार है कि अपीलार्थी ने न्यूक्लियर पावर कॉर्पोरेशन ऑफ इण्डिया लिमिटेड, अणुशक्ति के कार्यादेश क्रमांक 78014 दिनांक 12.10.2010 द्वारा निम्न संविदा कार्य रूपये 91,33,505/– का प्राप्त किया :

Work of supply, erection, testing & commissioning of 11 KV overhead line, its related equipments and other associated works for establishing construction power supply networks at RAPP 7 & 8.

लगातार.....2

इस कार्य को अपीलान्ट ने राज्य सरकार की अधिसूचना दिनांक 11.08.2006 के अनुसार 1.5 प्रतिशत की श्रेणी में मानते हुए विहित प्रारूप डब्ल्यू. टी.–1 के तहत आवेदन पत्र कर निर्धारण अधिकारी के समक्ष कर मुक्ति शुल्क प्रमाण पत्र जारी करने हेतु आवेदन किया। कर निर्धारण अधिकारी ने इस कार्य को 3 प्रतिशत की दर से मुक्ति शुल्क आरोपणीय होना अवधारित करते हुए आदेश जारी किये। अपीलार्थी व्यवहारी ने इस आदेश से व्यथित होकर अपीलीय अधिकारी, अजमेर के यहां अपील दायर की, जिसे अपीलीय अधिकारी द्वारा अस्वीकार किया गया।

3. अपीलार्थी व्यवहारी के अधिकृत प्रतिनिधि ने लिखित बहस प्रस्तुत की, जो निम्न प्रकार है :–

The dealer has received work order of contract, from R.A.P.P., Rawatbhata, via Kota, Rajasthan, to execute the work for **Erection, Testing and Commissioning, of HT Switchgears and power Transformer including Supply of 6.6 KV Switchgear, HT power Cable and Other Associated Work for Establishing main source construction power Supply Network for RAPP 7 & 8 at Rawatbhata** vide order No. 78014 dated 12-10-2010 for Rs. 64,06,154/-.

After receipt of work orders the dealer has applied before The C.T.O., W.C. & L.T. Circle, Kota, for exemption certificate against the payment of the work orders, to pay the (E.C. fee @ 1.5%) while it was applicable @2.25% on total contract amount under VAT Act **and as per notification No. F(12)(63) FD/Tax/2005-80/dated 11-08-2006. Through application dated 01-12-2010.**

But in response of the said application the E.C. has been issued after applying @3% on dated 14-12-2011 that is passing after 1 year. Whereas the time period is one month is reasonable period.

The learned Dy. Commissioner, Appeals Kota, has also erred to confirm the order of C.T.O., now the dealer is before this Hon'ble Tax Board with the following requests -

As per the referred notification, the Work covers in Para 3 going through the nature of the work of the works contracts relating to installation of plants and machinery-Machinery as per the language of the Oxford Advance Learner's Dictionary covers "**Appliance or mechanical device with parts working together to apply power, often steam or electric power.**

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Now, the only way out left before us is to submit decision of the **jurisdictional Hon'ble High Court of Rajasthan, Jaipur Bench.** In this case it was held by the Hon'ble Justice that in the such type of works contract cases, the E.C. fee is applicable @2.25%,(further it is also submitted that the appeal of the appellant was rejected), and held the order of Hon'ble Tax Board, Ajmer. The Board too held opinion that in such type cases, the E.C. fee should be applicable @2.25%. Even then, in case of impugned dealer the concerned court has over looked the matter **whereas in our case, the facts and nature of the works contract are of similar type.** Now, in support of our contention, we would like to further submit decision of the jurisdictional Hon'ble High Court whereby the matter has been decided in favor of correct application of E.C. fee and the same is being referred before this Hon'ble Board for their kind consideration as under -

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So, in view of above decisions, it is humbly requested to this court that the appeal may very kindly be accepted & E.C. fee on the works contracts should also be declared @2.25% on the work order No. 78014 dated 12-10-2010 same type of works.

4. प्रत्यर्थी विभाग की ओर से विद्वान उप–राजकीय अभिभाषक द्वारा अपीलीय आदेश का समर्थन किया गया तथा अपीलार्थी की अपील अस्वीकार करने की प्रार्थना की गई।

5. उपभयपक्षीय बहस पर मनन किया गया व पत्रावली का अवलोकन किया गया।

6. हस्तगत प्रकरण के निस्तारण के क्रम में अधिसूचना दिनांक 11.08.2006 का अध्ययन आवश्यक है अधिसूचना निम्न प्रकार है :–

F.12(63)FD/Tax/2005-80 **Dated : 11.08.2006**

In exercise of the power conferred by sub-section (3) of section 8 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 exempts from payment of tax the registered dealers engaged in execution of works contracts leviable on the transfer of property in goods (Whether as goods or in some other form) involved in the execution of works contract(s) subject to the following conditions, namely:-

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(1) that in case of works contracts,

(i) awarded on or after 01.04.2006, the contractor shall apply in form WT-1; and

(ii) where the contractor opted for automatic exemption fee under rule 12 of Rajasthan Sales Tax Rules, 1995 **shall apply** for exemption under this notification for the remaining part of the contract as on April 1, 2006, in form WT-2.

(2) that application **shall be submitted "within 60 days"** from the date of award of the contract or the date of issue of this notification, whichever is later;

(3) that in case of delayed submission of the application, the assessing authority may, after recording reasons for doing so, condone the delay, on payment of a late fee of rupees one thousand for a year or part thereof. [However, delay in case of second year or part thereof can be condoned on payment of a late fee of rupees five thousand and no application shall be entertained after expiry of two year from the date of the award of the contracts].

(4) that on receipt of the application under clause (1), the assessing authority on being satisfied as to the correctness of the facts mentioned therein, shall issue exemption certificate in Form WT-3 appended hereto, in the case of works contracts awarded on or after 1.4.2006 and in Form WT-4 appended hereto, in the case of work contracts, where the contractor opted for automatic exemption fee under rule 12 of Rajasthan Sales Tax Rules, 1995 for exemption, for the remaining part of the contract as on 01-04-2006. A copy thereof, shall be sent to the awarder.

(5) that such contractor shall pay exemption fee at the rate specified in Column 3 of the list given below in the following manner :-

(i) where an awarder is a Department of any Government, a Corporation, a public undertaking, a co-operative society, a local body, a statutory body, an autonomous body, a trust or a private or public limited company, an amount calculated at the rate as specified in column no.3 of the list given below shall be deducted by such awarder from each bill of payment to be made in any manner to such contactor and all the provisions of payment of tax provided in the Act or the rules made there under for contractors shall *mutatis mutandis* apply. In case the contractor has already received some payments for execution of works contract from the awarder before filing application, he shall enclose proof of payment/deduction of notified exemption fee on such payments, along with interest, if any, up to the date of filling of application, under this notification;

लगातार.....5

(ii) where the awarder is not covered under sub-clause (i) above, the contractor shall be required to make payment of exemption fee in equal monthly installments in a period not exceeding the period of contract from the date of filing of application. In case the contractor has already received some payments for execution of works contract from the awarder, he shall enclose proof of payment of notified exemption fee on such payment along with interest up to the date of filing of application, under this notification;

(iii) the amount already deducted by the awarder in lieu of tax from bills of payments to the dealer before the issuance of this notification shall be adjusted against the exemption fee;

(6) that the contractor shall not be entitled to claim input tax credit in respect of the goods used in excution of the works contract for which exemption certificate has been granted;

(7) that the certificate of exemption shall be liable to be cancelled by the assessing authority retrospectively if it is found that the same has been issued under contravention of the provisions of the Act, rules or notifications; and

(8) that the tax collected or charged, if any, by such dealer before the issue of this notification shall be deposited, to the State Government and tax so deposited shall not be refunded or adjusted against the exemption fee.

Item No.	**Description of work contract**	**Rate of exemption fee % of the total value of the contract**
1	**2**	**3**
1.	Works contracts relating to dyeing, printing, processing and similar activities.	0.25 %
2.	Works contracts relating to buildings, roads, bridges, dams, canals, sewerages system.	1.50 %
3.	works contract relating to installation of plants & machinery including PSPO, water treatment plant, laying pipeline with material.	2.25 %
4.	Any other kind of works contract not covered by item No.1, 2 and 3.	3.00 %

This notification shall be deemed to have come into force w.e.f. April 1, 2006

7. हस्तगत प्रकरण में अपीलार्थी को न्यूक्लियर पॉवर कॉर्पोरेशन ऑफ इण्डिया अणुशक्ति के कार्यादेश क्रमांक 78014 दिनांक 12.10.2010 से निम्न कार्य करने का संविदा कार्य दिया गया :–

लगातार.....6

"Work order for Erection, Testing and Commissioning, of HT Switchgears and power Transformer including Supply of 6.6 KV Switchgear, HT power Cable and Other Associated Work for establishing main source construction power Supply NetWork for RAPP 7 & 8."

8. राज्य सरकार द्वारा जारी उपरोक्त अधिसूचना दिनांक 11.08.2006 में तालिका में जो सूची दी गई है उस सूची में कार्य की प्रकृति के अनुसार संकर्म संविदा का विवरण दिया गया है। हस्तगत प्रकरण में विवाद का बिन्दु यह है कि अपीलार्थी को अवार्डर से प्राप्त कार्य आदेश पर कर मुक्ति शुल्क की दर 1.50 प्रतिशत लागू होगी अथवा 3.00 प्रतिशत लागू होगी।

9. अपीलार्थी व्यवहारी के विद्वान अभिभाषक द्वारा प्रस्तुत न्यायिक दृष्टान्त का ससम्मान अध्ययन किया गया। न्यायिक दृष्टान्त के आधार पर विद्वान अभिभाषक ने 2.25 प्रतिशत की कर मुक्ति शुल्क दर लागू होने का तर्क दिया है। अपीलार्थी को प्राप्त कार्यादेश के अवलोकन से स्पष्ट है कि व्यवहारी द्वारा "Work of supply, erection, testing & commissioning of 11 KV overhead line, its related equipments and other associated works for establishing construction power supply networks at RAPP 7 & 8" का कार्य किया गया है, उक्त कार्य की प्रकृति को मध्यनजर रखते हुए यह स्पष्ट है कि उक्त कार्य राज्य सरकार की अधिसूचना दिनांक 11.08.2006 के कॉलम संख्या 3– "works contract relating to installation of plants & machinery including PSPO, water treatment plant, laying pipeline with material." से आच्छादित होता है, जिस पर 2.25 प्रतिशत की दर से करमुक्ति शुल्क की देयता होती है।

10. उपरोक्त विवेचन के पश्चात यह निष्कर्षित किया जाता है कि अपीलार्थी व्यवहारी को अवार्डर द्वारा दिये गये कार्यादेश पर अधिसूचना दिनांक 11.08.2006 में दी गई तालिका में क्रम संख्या 3 के सामने अंकित करमुक्ति शुल्क की दर लागू होगी। कर निर्धारण अधिकारी द्वारा 3 प्रतिशत की दर से करमुक्ति शुल्क का आरोपण किये जाने में एवं अपीलीय अधिकारी द्वारा उक्त आदेश की पुष्टि किये जाने में विधिक त्रुटि की गयी है।

11. परिणामस्वरूप अपीलार्थी व्यवहारी की अपील स्वीकार किय जाने योग्य होने के कारण स्वीकार की जाती है।

12. निर्णय सुनाया गया।

(मनोहर पुरी)
सदस्य

(खेमराज)
अध्यक्ष