

Rajasthan Tax Board, Ajmer

Appeal No. 1179/2015/Jaipur

Appeal No. 2232/2016/Jaipur

M/s ESS PEE Construction
D-30, Ambabari,
Jaipur

...Appellant

VERSUS

Assistant Commissioner Works
Contract and Leasing Tax,
Zone-I, Jaipur

.....Respondent

D.B.

SHRI RAJEEV CHOUDHARY, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Rahul Lakhwani, Advocate

for Appellant

Shri N.K. Baid,

Dy. Govt. Advocate

for Respondents

Dated : 10/04/2018

JUDGMENT

1. These appeals have been filed by the appellant dealer (hereinafter called the "appellant"), against orders of the Appellate Authority-III, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority") dated 01.05.2015 and 06.04.2016, who rejected the appeals against orders of the Commercial Taxes Officer, Works Contract and Leasing Tax, Zone-I, Jaipur (hereinafter called the "assessing officer" or "AO") dated 31.01.2014, the details of the same is as under:-

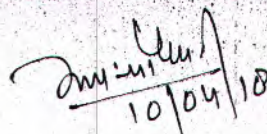
Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details	
		Appeal No.	order dated	order dated	EC Fee under Dispute (Rs.)
1179/2015	2011-12	77/Appeals-III/14-15/M	01.05.2015	30.01.2014	164149
2232/2016	2012-13	120/Appeals-III/15-16/M	06.04.2016	22.06.2015	754170

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2. Brief facts leading to the present appeals are that the appellant is a works contractor and during the year 2011-2012 got a work order for execution of a work relating to construction of Civil work as awarded by a developer M/s Mahima Real Estate Pvt. Ltd. in pursuance of the agreement as entered between the parties on 29.08.2011. The appellant opted for exemption under the Notification No. F.12 (63) FD / Tax / 2005-80 dated 11.08.2006 and the AO issued exemption certificates (ECs) for the year 2011-12 on 20.10.2011 and that for 2012-13 on 21.02.2012. Later, the appellant requested the AO that as no taxable goods is involved in execution of the said work contracts, therefore, the ECs already issued earlier be cancelled. The AO however, held that there is no such provision for cancellation of the EC once it has been issued, and rejected the applications.
3. Aggrieved of the AOs orders the appellant filed appeals before the appellate authority who vide his appellate orders dated 01.05.2015 and 06.04.2016 rejected the same. Against these appellate orders, the instant appeals have been filed before the Rajasthan Tax Board under section 83 of the Act.
4. Learned counsel for the appellant submits that the appellant had got a works contract for civil work pertaining to construction of residential flats as awarded by M/s Mahima Real Estate Pvt. Ltd. and as per terms of the agreement the cement and steel were to be supplied free of cost by the awarder. The appellant applied for exemption certificate(s) under the notification dated 11.08.2006 for the year 2011-12 and the AO issued the Exemption Certificate No. 1249/1128. Similarly, for the year 2012-13 EC No. 1344/1662 was issued on 21.02.2012. Later, the appellant submitted an application before the AO that in these works contracts he does not have any tax liability because taxable goods i.e. cement and iron are to be supplied by the awarder himself and items to be used by him i.e. Bajri and Gitti were exempted from tax, therefore, no liability of tax




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or EC *per se* stood on these works contracts, therefore, appellant requested to cancel the ECs issued so far. The AO in his order dated 01.06.2015 has held that there is no such provision for cancellation of EC and has rejected the application of the appellant and has further finalized the assessment order in which EC Fee @ 1.5% has been determined. He referred the following judgments:

1. The South India Corporation Pvt. Ltd. V/s Asst. Commissioner O.P. No. 10116/1998-D date of order 19.03.1993 (Kerala)
2. Sanchit Software and Solutions (P) Ltd. V/s Commissioner of Income Tax-8: Writ Petition No. 783/2012 date of order 07.09.2012 (Bombay)

He further argued that as per clause 7 of the notification dated 11.08.2006, the assessing authority has been given powers to retrospectively cancel the eligibility certificate, so in the instant cases, the AO should have cancelled the ECs retrospectively, as requested by the appellant.

2. Learned Deputy Government Advocate appearing for the respondent-Revenue supported orders of the appellate authority as well as that of the assessing officer and submitted that under the notification dated 11.08.2006, there is no provision for cancellation of the EC on request of the dealer, therefore, the appeals deserve to be rejected.
3. We have gone through the submissions of both the parties and perused the relevant record. Firstly, it would be appropriate to peruse the notification no. F.12(63)FD/Tax/2005-80 dated 11.08.2006 (as amended from time to time) and the same is reproduced hereunder:

"In exercise of the powers 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 01.4.2006, 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 30 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. No such application shall be entertained after expiry of one 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 01.04.06. 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 contractor and all the provisions of payment of tax provided in the Act or the rules made thereunder for works 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 filing of application, under this notification;
 - (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 payments, 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 execution of the works contract for which exemption certificate has been granted;

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- (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 notification; 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, sewerage system.	1.50%
3.	Works contracts relating to installation of plants and machinery including PSPO, water treatment plant, laying of pipe line with material.	2.25%
4.	Any other kind of works contract not covered by item Nos. 1, 2 and 3.	3.00%

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

4. On perusal of the abovementioned notification, it is evident that the State Government has provided of a window to the contractors executing works contracts, to apply for such an exemption on payment of an exemption fee as notified therein and after carefully studying the notification (supra) we are of the considered view that there is no provision, whatsoever, for dealers to get the Exemption Certificate cancelled retrospectively and opt out from ambit of the notification for any reason. Clause 7 of the said notification empowers the assessing authority to cancel the EC retrospectively, only if it is found that the same has been issued under contravention of the provisions of the Act, rules or notification, but in the instant case since there is no such contravention, therefore, the EC can't be cancelled by the AO. So, the argument of the appellant on this count is not found tenable.

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5. Moreover, the appellant in the present case had applied for the exemption certificate in the year 2011-12 and EC was issued on 24.10.2011 and similarly, for the year 2012-13 the EC was issued on 21.02.2012. The appellant requested the AO for cancellation of the said ECs vide his letter dated 29.10.2012, almost one year after issuance of the EC for the year 2011-12 and about eight months after issuance of the EC for the year 2012-13. The learned advocate for the appellant could not elucidate as to under which provision of the Act/ Rule/ Notification the appellant has applied or could have applied for such cancellation.
6. Though there appears some discrepancy in the figures of EC fee as determined by the AO and as disputed by the appellant for the respective ECs/ years, but we don't go into that discrepancy and instead stick to the core dispute only.
7. On perusal of the scheme of the notification dated 11.08.2006, it transpires that it is absolutely voluntary on part of the dealer to opt for the EC and on opting for the same the dealer is relieved of so many accounting formalities like maintenance of detailed books of accounts and also given the facility of filing a simplified annual return in Form VAT-11. Since it is a voluntary act on part of the assessee, therefore, before opting for the EC he is supposed to analyze the pros and cons in opting for the scheme. But in the present case, it appears that almost after one year of issuance of the EC, the appellant might have felt that it was a bit disadvantageous to him, may be for any reason, in opting for the scheme and to continue to remain under the same, therefore, he requested for cancellation of the EC or in effect to withdraw from purview of the option he exercised for under the said notification, which is not permissible in any case.
8. Since the concept of the 'fee' is based on the principle of *quid pro quo* and once the dealer has opted for the Scheme, there is no scope for withdrawing from the same unless there is

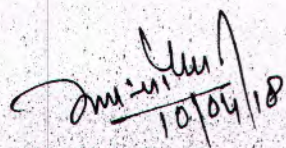
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an enabling provision under the Scheme (notification) itself. If the dealer is allowed to withdraw at a later stage, then everyone will do his bit of calculation for profit and loss to remain within or to opt out of the scheme at his convenience and would ask for refund of the EC fee, which will defeat the very purpose of the notification and vitiate the scheme as such. Therefore, it is held that such a provision for cancellation of the EC retrospectively on request of the dealer himself, is not available under the scheme. So the dealer, for the sake of his convenience, can't exit from the option already exercised when the Exemption Certificate has duly been issued by the competent officer.

9. The judgments as referred by the appellant are having different facts and circumstances, therefore, the same can't be applied here.
10. In the facts and circumstances of the case as well as the provisions as contained in the notification dated 11.08.2006, it is held there is no provision available for the dealer to get the EC cancelled retrospectively, once he has applied under the scheme and the Exemption Certificate has also been issued to him, therefore, the AO was justified in rejecting applications of the appellant to cancel the ECs already granted and the appellate authority was correct in disallowing the appeals filed before him. Hence, the present appeals being devoid of any merit, deserve to be rejected.
11. Resultantly, the impugned appellate orders are confirmed and both the appeals are rejected.
12. Order pronounced.


10.04.2018
(Omkar Singh Ashiya)
Member


10/04/18
(Rajeev Choudhary)
Member