

RAJASTHAN TAX BOARD, AJMER

Revision No. 1486/2013/Jaipur

M/s Hotel Cambay Spa & Resorts, Kukas

.....Revisionist

Vs

Excise Commissioner, Udaipur & Others
District Excise Officer, Jaipur City,
Jaipur

.....Respondents

DB

Shri B.K. Meena, Chairperson
Shri Madan Lal, Member

Present:-

1. Shri Vivek Sharma & Shri Mitra Sharma, AdvocatesFor Appellant
2. Shri Ram Karan Singh, DGA
3. Shri Sumer Singh Meena, OICFor Respondents

JUDGMENT

Dated: 03/08/2015

This revision has been filed by the Revisionist under section 9A (4) of the Rajasthan Excise Act, 1950 (For short 'The Excise Act') against the order of the Excise Commissioner, Udaipur (For short " The Commissioner") passed on 27.06.2013 under section 9A (3) of the Act wherein he rejected the appeal of the revisionist filed against the notice No. 4553 dated 09.04.2013 issued by the District Excise Officer, Jaipur City. The Commissioner relied upon the 1st proviso of sub section 4 of section 9A of the Act, wherein it is provided that no appeal shall be entertained unless it is accompanied by a satisfactory proof of payment of 75% of the amount of the demand created by the order appealed against. Since this revisionist has not complied with the mandatory provisions of the Act, therefore the Commissioner rejected appeal on this ground.

The Revisionist preferred revision before the Rajasthan Tax Board to waive the mandatory provision of pre deposit 75% of the amount of demand inter alia to set aside the order of the Commissioner. Meanwhile the revisionist approached to the Hon'ble Rajasthan High Court by way of writ petition. Hon'ble Rajasthan High Court while deciding writ petition directed :

"Having regard to the facts aforesaid, this Court does not deem it appropriate to entertain the writ petition on merits since the matter is pending before the Rajasthan Tax Board where the parties would have liberty to address on merits of the case. It is, however, directed that if the petitioners deposit 50% of the total demand after adjusting the amount already paid / deposited by the petitioners in cash or through demand



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draft within a period of one week, the respondents shall open the seal of the hotels of the petitioners. The Rajasthan Tax Board is directed to decide revision petition of the petitioners on merits within one month from the date certificate of such 50% deposit is produced before it. With the aforesaid directions, the writ petitions are disposed of "

In the wake of decision above, the revisionist has deposited 50% of the total demand after adjusting the amount already deposited, therefore, requested to decide the matter on merit.

Learned counsels for the revisionist argued that since compliance of the judgement of the Hon'ble High Court dated 01.05.2015 has been made, therefore, as per directions given by the Hon'ble High Court, it should be heard on merit.

On the other hand learned DGA Shri Ram Karan Singh contended that appeal has been rejected by the Commissioner on the ground that the revisionist has not deposited 75% required mandatory deposits. Now he has deposited 50% of demand so created in pursuance of judgement of Hon'ble Rajasthan High Court. Since as per provisions of the Act, 75% of the demand ought to be deposited and the Commissioner rejected the appeal on sole grounds for not depositing 75% of the demand created as per provisions of the Act. The Commissioner has not gone through the merit of the appeal and rejected the appeal on the preliminary issue of pre deposit only hence no revision on merit is pending except issue of pre deposit only.

With a view and looking into the facts and circumstances of this case, it deems proper to direct the Commissioner to pass the order on merit of the case, entertaining the appeal taking into account of the mandatory pre requisite amount is dispensed with upto 50% in the impugned case as directed by the Hon'ble High Court in the writ petition. Therefore order passed by the Commissioner is set aside and the case is remanded to the Commissioner to decide the appeal filed before him on merit afresh.

The revision is disposed of accordingly.

Order pronounced


3.8.2015
(MADAN LAL)
MEMBER

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(B.K. MEENA)
CHAIRPERSON