

Rajasthan Tax Board, Ajmer

1. Appeal No. 1787/2017/Jodhpur
2. Appeal No. 1788/2017/ Jodhpur
3. Appeal No. 1789/2017/ Jodhpur
4. Appeal No. 1790/2017/ Jodhpur
5. Appeal No. 1791/2017/ Jodhpur
6. Appeal No. 1792/2017/ Jodhpur

Commercial Taxes Officer,
Anti-Evasion- III, Rajasthan
Jaipur

Appellant

VERSUS

M/s P.C. Jewellers Ltd.
Jodhpur

Respondent

D.B.

SHRI V. SRINIVAS, CHAIRMAN
SHRI OMKAR SINGH ASHIYA, MEMBER

Present:

Shri D.P. Ojha, Dy. Govt. Advocate
Shri V.C. Sogani, Advocate

for Revenue
for Assessee

Dated : 03/10/2018

JUDGMENT

1. These appeals have been filed by the appellant-Revenue against orders of the Appellate Authority, Commercial Taxes, Jodhpur (hereinafter called the "appellate authority") who vide his appellate order dated 31.05.2017, has set aside the orders of the Commercial Taxes Officer, Anti-Evasion-III, Rajasthan, Jaipur (hereinafter called the "assessing officer" or "AO") dated 04.04.2016 passed under section 4(2), 26, 55, 61 & 65 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "RVAT Act") . The details of the appellate as well as the assessment orders are mentioned below :-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details (Amount disputed in present Appeals)			
		Appeal No.	order dated	order dated	Tax	Interest	Penalty
1787/2017	2010-11	046/RVAT/JUD	31.05.2017	26.10.2016	129836	93482	259672
1788/2017	2011-12	047/RVAT/JUD	31.05.2017	26.10.2016	1232325	751718	2464650
1789/2017	2012-13	048/RVAT/JUD	31.05.2017	26.10.2016	1445328	708701	2890656
1790/2017	2013-14	049/RVAT/JUD	31.05.2017	26.10.2016	8094151	2994836	16188302
1791/2017	2014-15	050/RVAT/JUD	31.05.2017	26.10.2016	7078706	1911251	14157412
1792/2017	2015-16	051/RVAT/JUD	31.05.2017	26.10.2016	7020450	1053068	14040900

2. As a common issue is involved in all these appeals, therefore, these are disposed off by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the respondent assessee is a company registered under the Companies Act, 1956 having its registered office in New Delhi. In Rajasthan, the respondent is having its registered business place in Jodhpur with branches at Pali, Bhilwara, Ajmer, Beawar, Sriganganagar and Jaipur. The respondent mainly deals in manufacturing, purchase and sale of Jewellery made of precious metal, mainly of gold. The Anti-evasion authorities surveyed the business place and found that during the years 2010-11 to 2015-16 the respondent has purchased old ornaments/ old jewellery made of gold, from customers or unregistered dealers, which was subsequently transferred to its Delhi Head Office for job work. The respondent brought back the finished goods in form of jewellery/ornaments from its Delhi head office and sold in the State after charging the due VAT. The AE authorities were of the view that the goods so purchased from unregistered dealers/customers on which no tax has been paid to the State, would attract purchase tax u/s 4(2) of the RVAT Act, and they registered a case of evasion/ escapement of tax and the case was transferred to AO for adjudication.
4. The AO issued notice to the respondent assessee and after taking his reply, passed the orders u/s 26 of the RVAT Act and levied purchase tax, interest and penalty u/s 61 of the Act. Being aggrieved of the assessment orders, the respondent preferred appeals before the appellate authority who vide his order dated 31.05.2017 accepted the appeals and set aside the levy of purchase tax, interest and penalty. The Revenue has preferred these appeals before the Tax Board under section 83 of the Act, against order of the Appellate Authority.
5. Learned Deputy Government Advocate appearing for the appellant-Revenue submits that the appellate authority has grossly erred in setting aside the levy of purchase tax, interest and penalty. He further submits that the respondent has not

disposed off the goods for the purposes as specified u/s 18(1) clause (a) to (g), therefore, his liability arises for payment of purchase tax and that the respondent has not paid the due purchase tax, therefore, the AO was justified in levy of tax, interest and imposing penalty for the evasion/escapement. He, therefore, requests to set aside the appellate order and to restore orders of the AO.

6. Learned counsel for the respondent submits that the assessee has purchased old ornaments made of gold from customers or unregistered dealers in the State and so as to make new ornaments/jewellery out of that, the goods were sent to its head office at Delhi for job work with proper documentation and received back as finished goods after undergoing the manufacturing process. The said goods were sent with support of the statutory form VAT 49/49A and received back with support of the form VAT47/47A. He further argues that the goods in question has not been disposed off other than the purposes specified in clause (a) to (g) of section 18(1), therefore, no liability arises of purchase tax. He further requests that the appellate authority has rightly set aside the levy of purchase tax, interest and penalty, therefore, the order of the appellate authority is correct and appeals of the revenue may be rejected.
7. We have gone through the submissions of both the parties and perused the relevant record and statutory provisions as well. The only question involved in present appeals is as to whether the purchase tax is leviable on the old gold ornaments purchased within the State and sent to the assessee's head office outside the State for job work, when the newly manufactured items made out of the said goods so sent for job work, is received back in the State and on sale of the same the due tax is collected and paid to the State Government. This fact is not in dispute that the goods in question were duly accounted for at the time of purchase; has been sent to assessee's head office with proper documentation; the finished goods too has been received back with proper documentation; and the goods so received has been sold within State on which due tax has been paid.



8. Before deciding the issue in its entirety, it is necessary to go through the provisions of the Act as contained in section 4(2) and section 18(1)(a) to (g). Sub-section (2) of section (4) provides for levy of purchase tax when the goods are disposed off otherwise than by way of use as described under clause (a) to (g) of section 18(1). The section 4 is reproduced as under:

"4. Levy of tax and its rate. – (1) Subject to the other provisions of this Act and the provisions of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the tax payable by a dealer under this Act, shall be at such point or points, as may be prescribed, in the series of sales by successive dealers and shall be levied on the taxable turnover of sale of goods specified in Schedule III to Schedule VI at the rate mentioned against each of such goods in the said Schedules.

(2) Every dealer who in the course of his business purchases any good other than exempted goods in the circumstances in which no tax under sub-section (1) is payable on the sale price of such goods and the goods are disposed off for the purpose other than those specified in clause (a) to (g) of sub-section (1) of section 18, shall be liable to pay tax on the purchase price of such goods at the rate mentioned against each of such goods in Schedule-III to Schedule VI of the Act."

Likewise, the section 18(1) is also reproduced hereunder:-

"18. Input Tax Credit.– (1) Input tax credit shall be allowed, to registered dealers; other than the dealers covered by sub-section (2) of section 3 or section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of –

- (a) sale within the State of Rajasthan; or
- (b) sale in the course of inter-State trade and commerce; or
- (c) sale in the course of export outside the territory of India; or
- (d) being used as packing material of the goods, other than exempted goods, for sale; or
- (e) being used as raw material, except those as may be notified by the State Government, in the manufacture of goods other than exempted goods, for sale within the State or in the course of inter-State trade or commerce; or
- (f) being used as packing material of goods or as raw material in manufacture of goods for sale in the course of export outside the territory of India; or


(g) being used in the State as capital goods in manufacture of goods other than exempted goods, however, if the goods purchased are used partly for the purposes specified in this sub-section and partly as otherwise, input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section."

9. On conjoint reading of section 4(2) and section 18(1) it can be said that the purchase tax is leviable when (i) the goods is purchased in the course of business where no tax was payable u/s 4(1) on purchase of the said goods, and (ii) these goods are disposed off for the purposes other than those mentioned in clause (a) to (g) of section 18(1). It is an averment for the appellant that the goods in question have been used in manufacture of the goods for sale within the State and the clause (e) nowhere specifies that such manufacturing should be undertaken within the State itself, therefore, no purchase tax is leviable on the purchase of the goods in question. In light of the principles as laid down in the referred judgments: (i) **Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Ors. vs. East India Cotton Mfg. Co. Ltd., Faridabad** (order dated 23.07.1981): **(1981) 48 STC 239 (SC)**; (ii) **ACTO Vs Shankar Lal Ghanshyam Das** (1987) 67 STC 208 (Raj); and **M/s D.P. Jewellers Vs Assistant Commissioner** (Appeal No. 1532-1534/2016/UDP RTB) and on conjoint reading of section 4(2) and section 18(1), we arrive at a considered view that had there been a suffix "within state" after the words 'in the manufacture of goods' as mentioned in clause (e) of section 18(1), only then the purchase tax liability would have arisen in the instant matter.
10. It is important to note that the goods in question (old gold ornaments) were sent to Delhi at respondent's head office for manufacturing of new ornaments and the same have come back and sold in the State paying VAT on the value addition also. The basic theme behind the provision of levy of purchase tax was to ensure that the goods as purchased within the State without paying any tax, should not be disposed off otherwise than by way of sale (e.g. branch transfer for sale

outside the State) and State must get due tax at least on purchase price of the goods so purchased. But in the present case, firstly the goods have not been disposed off other than by way of sale and the same have been sent for job work for further manufacturing to make new ornaments/jewellery out of the old ornaments/jewellery. Secondly, the said finished goods have been received back in the State and due tax has been charged and paid to the exchequer on the goods including its value-added component. So, for all practical purposes, the goods in question have been used for the purpose as mentioned u/s 18(1)(e).

11. Moreover, in a similar matter pertaining to the Rajasthan Sales Tax Act, 1954 wherein a similar provision for levy of purchase tax existed, the Hon'ble Rajasthan High Court in the matter of **ACTO Vs Shankar Lal Ghanshyam Das (1987) 67 STC 208 (Raj)** has held that the goods sent for some processes outside the State shall not disqualify the assessee from exemption for the reason that goods were not manufactured within the State.
12. Recently, in a similar matter, a co-ordinate bench of the Rajasthan Tax Board in the matter of **M/s D.P. Jewellers Vs Assistant Commissioner (Appeal No. 1532-1534/2016/UDP)**, order dated 06.08.2018, has in a detailed judgment set aside the levy of purchase tax on the old ornaments purchased within the State from customers or unregistered dealers and sent to the assessee's head office at Indore for manufacturing of new items which were brought back into the State and sold after charging due tax.
13. In light of the discussion hereinabove and the referred judgments, we are of the considered view that no purchase tax is leviable on the purchase of old gold ornaments which were subsequently sent to the respondent's head office at Delhi for job work / manufacturing of new ornaments, and the goods in question have been used for 'manufacture' and the finished goods have been received back in the State for sale, on which the State has got the due tax. Therefore, the appellate authority has rightly set aside the levy of tax, interest and penalty.

14. Accordingly, the appellate order is upheld and appeals of the Revenue are rejected.
15. Order pronounced.


03.10.2018

(OMKAR SINGH ASHIYA)
Member



(V. SRINIVAS)
Chairman