

RAJASTHAN TAX BOARD, AJMER

Appeal No: 1823/2014/Sirohi

The Commercial Taxes officer
Anti Evasion, Rajasthan II , Jaipur.the Appellant
Versus
M/s. J.K. Laxmi Cement Ltd.,
J.K. Puram, Pindwara, Distt. Sirohi.the Respondent

DB
Shri V. Srinivas, Chairperson
Shri Madan Lal, Member

Present:

Sh. D.P. Ojha,
Deputy Govt. Advocate (DGA)for the Appellant
Sh. M.L. Patodi, Advocatefor the Respondent

Decision Dated : 17/07/2017

JUDGEMENT

1. This appeal has been filed by the appellant Revenue under section 83 of the Rajasthan Value Added Act 2003 (in short '**the Act**'), against the order dated 25.03.2014 passed by the Deputy Commissioner(Appeals)I, Commercial Tax, Jaipur (in short the Appellate Authority), where in the order of the Assessing Officer CTO, Anti Evasion Rajasthan II, Jaipur (in short '**the AO**') dated 31.01.2013 passed under section 26, 55, 56 and 61 of the Act, has been partially accepted by the said Appellate Authority and set aside the penalty imposed under Section 61 of the Act.

2. At the outset, in brevity, the facts of the case which paved way for this appeal, are mentioned here under:

(i) The Respondent is a Cement manufacturer Company situated at Sirohi Distt. Which Purchased mining equipments, Spares of mining motor vehicle and fuel during the period of 2008-09 and used it in mining operations as to digging of raw material for manufacturing of cement. The AO rejected the claim of input tax credit on the grounds that these goods/articles are not used in the process of manufacture but used in mining operations. The claim of respondent was rejected and tax levied in addition interest, penalty imposed under section 61 of the Act for taking input tax credit intentionally against the output tax which was not allowable under sec. 18(1) of the Act. Further penalty was imposed by the AO under section 61(2)(b) of the Act.

(ii) Aggrieved with this order of the AO the respondent preferred appeal before the appellate authority who accepted the appeal partially and deleted the penalty amount Rs. 94,40,794/- stating that all transactions of purchases and input tax credit has been entered in the books of account maintained by the respondent and shown in the returns filed with the department. therefore, no mensrea is there on the part of the respondent unit.

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(iii) Aggrieved with the order of the appellate authority deleting the penalty, the revenue preferred appeal before the Rajasthan Tax Board which is under consideration for adjudication.

3. Heard both the parties.

4. The learned DGA contended that the appellate authority has erred in deleting the penalty as he maintained tax and interest levied by the AO. He ought to have seen the matter in entirety of the case as respondent had evaded due tax the penalty has been deleted only on sole ground that transaction were found recorded in regular books of accounts of the respondent company. He grossly erred in not considering the decision rendered in case of ACTO Vs M/s Savita Chemical Ltd., STD Vol. 6 part 4 page 87 and Guljag Industries Vs Commercial Taxes Officer (2007) 8 VAT Reporter page 87, M/s R.S Joshi and Others Vs Ajit Mills Ltd. and others AIR 1977 SC 2279 and M/s Maharana Talkies, Bhilwara Vs State of Rajasthan, 2005 (11) TUD Vol. 11 page 5, wherein Hon'ble Courts ruled that mensrea is not applicable in fiscal matters, hence penalty can be imposed on breach of civil liability. On the basis of ratio propounded in these citations above, the penalty, he requested to be restored and appeal may be allowed.

5. On the other hand the learned counsel for the respondent unit strongly resisted the arguments advanced by the DGA. He draw our attention towards the decision rendered by the Apex Court in the matter of Ms shri Krishana Electrical Vs State of Tamil Nadu and others (2009) 23 VST 249 (SC) and placed reliance on the following judgments delivered by the Hon'ble Rajasthan High Court in the matter of CTO Special Circle, Pali Vs Ms Sojat Lime Company, 74 STC 288, CTO Vs Ms Bara Cooperative Marketing Society Ltd. 93 STC 239, ACTO Vs Ms Kumawat Udyog 97 STC 238, Ms Lard Venketashawra Cateres Vs CTO 19 TUD 85, CTO Vs Ms Durgeshwari Food Ltd. 32 TUD 3. On the basis of principles laid down in the decisions (supra) the counsel supported the decision of the appellate authority and requested to disallow the appeal filed by the appellant revenue.

6. We have perused the record and gone through the decisions submitted by the counsels for the both parties.

7. The issue before us for decision is limited to the penalty, deleted by the appellate authority. Undisputed facts about the penalty are that all transactions are entered in the regular books of accounts maintained by the respondent unit and shown in returns filed with the department. Main issue in the appeal pertained to the fact whether goods/articles purchased mining equipments, spares of mining motor vehicle and fuel during the period of 2008-09 and used in mining of raw material for manufacture of cement, are eligible for input tax credit ? The AO disallowed the claim of input tax credit on the pretext that these goods/articles are not used in the process of manufacture but used in mining operations, therefore he rejected the claim of respondent as to input tax credit and levied tax and interest, in addition to penalty imposed under section 61 of the Act for utilization of input tax credit intentionally which was not mandated in law, not allowable under this Act. Now question for determination before us is whether penalty

is leviable in the circumstances above is valid as per law? The Apex Court laid the principle down in this regard in the matter of Sri Krishana Electricals Vs State of Tamil Nadu and others (2009) 23 VST page 249 as under:

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's accounts books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers turnover disallowing the exemption penalty cannot be imposed. The penalty levied stands set aside."

8. Apart from above decision by the Hon'ble Apex Court, Hon'ble Rajasthan High Court followed the essentials of the judgment in the following judgments :-

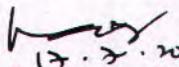
CTO Special Circle, Pali Vs Ms Sojat Lime Company, 74 STC 288, CTO Vs Ms Bara Cooperative Marketing Society Ltd. 93 STC 239, ACTO Vs Ms Kumawat Udyog 97 STC 238, Ms Lard Venketashawra Cateres Vs CTO 19 TUD 85, CTO Vs Ms Durgeshwari Food Ltd. 32 TUD 3. In case of Ms Durgeshwari Food Ltd. 32 TUD 3 Hon'ble High Court has ruled that :-

"However, as far as question of penalty u/s 61 of the Act is concerned, the imposition of the same by the Assessing Authority under Section 61 of the Act of 2003 to the extent of double the amount of tax is concerned, the same cannot be sustained and deletion of penalty in these circumstances, where a debatable question was agitated by the respondent-assessee before the appellate forums created under the Act, it cannot be said the assessee deliberately filed wrong returns or particulars of taxable turnover or malafide claimed 100% input tax credit. A benefit or doubt in this regard certainly goes in favour of respondent-assessee."

9. Since issues and facts related in the instant appeal are similar The respondent unit has entered all the transactions in his regular books of accounts. Only issue which was disputed by the respondent whether goods/articles purchased and utilized in the captive mining operation are eligible for input tax credit or liable to reverse input tax credit which are meant for extrating raw material for manufacture of cement. Be that it may, here issue related with penalty only, Since all transactions are entered in the regular books of account as well as shown in the returns filed by the respondent therefore, looking in to the ratio propounded by the Hon'ble Courts in various decisions (supra) we have no hesitation to uphold the order dated 25.03.2014 of appellate authority as to deleting the penalty.

10. In the wake of above analysis, we found no merits in the appeal filed by the appellant revenue, consequently dismissed and disposed of accordingly.

Order pronounced.


(Madan Lal)
Member


(V. Srinivas)
Chairperson