

Rajasthan Tax Board, Aimer

Appeal No. 2050/2008/Jaipur

Assistant Commissioner,
Anti-Evasion-I, Rajasthan,
Jaipur

...Appellant

VERSUS

M/s Shri Ram Refrigeration Ind.,
Sethi Colony, Jaipur

....Respondents

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Alkesh Sharma, Advocate

for Appellant

Shri N.K. Baid,
Dy. Govt. Advocate

for Respondents

Dated : 19/01/2018

JUDGMENT

1. This appeal has been filed by the appellant Revenue (hereinafter called the "appellant") against order of the Deputy Commissioner Appeals-I, Commercial Tax Department, Jaipur (hereinafter called the "appellate Authority") who vide order dated 22.11.2007 has set aside the levy of tax Rs. 1,35,184/-, interest Rs. 29,766/- and penalty Rs. 2,50,000/- as imposed by the Commercial Taxes Officer, Anti-Evasion-I, Rajasthan, Jaipur (hereinafter called the "assessing authority") in the assessment order dated 04.01.1999, passed under Section 37/34 of the Rajasthan Sales Tax Act, 1994 (hereinafter called the "Act").

2. Brief facts leading to the present appeal are that the appellant is doing the business, apart from other goods, of sale of air conditioner and compressor. The Anti-evasion authorities conducted a survey of business premises of the respondent on 11.06.1991 and the assessing authority finalized assessment on 04.01.1999 and levied tax, interest and penalty on an allegedly evaded turnover of Rs. 12,26,535/-. This turnover is related to the receipt of 'Handling Charges' and




'Contingency Charges' as collected from the customers on replacing the defective compressors. If any compressor becomes defective within the warranty period, then the same was replaced free of cost. However, when any compressor became defective after the warranty period or brought after that time line, the respondent still replaced the same with a repaired or re-built compressor, albeit with minor operational charges in the name of 'Handling charges' and "Contingency charges" in the range of Rs. 150-200 and Rs. 150-270 apiece, respectively. In the books of accounts, these receipts were shown as 'repairing charges'. It is also admitted fact that the defective compressor remained with the respondent only, and was not returned to customer, so effectively the customer possessed the 'replaced compressor' in place of defective compressor.

3. The assessing authority arrived at a conclusion that replacement of compressors was done under an 'implied contract' and that such transaction falls under the category of 'sale', for which some valuable consideration was taken by the respondent. With above findings, the assessing authority levied tax, interest and penalty. Aggrieved of the assessment order, the respondent preferred an appeal before the appellate authority who vide order dated 22.11.2007 accepted the appeal and set aside the levies. Against this order, the Revenue has preferred this appeal.

4. Learned Deputy Government Advocate appearing for the appellant defends the assessment order and requested to set aside the appellate order as the amount received on replacement of the defective compressor, was in fact a consideration for replacement of the compressor.

5. Per contra, the learned advocate appearing for the respondent vehemently argued that no sale was materialized of compressor as the respondent replaced the defective compressor and charged only meagre charges as 'Handling' and 'Contingency' charges and the transaction as such or levy of these incidental charges not tantamount


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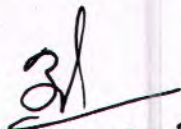
to sale, hence not taxable at all. In support of his arguments he cited following judgments of the Rajasthan Tax Board:-

1. CTO Vs. M/s Kirloskar Bros. Ltd, DB Appeal no. 36/95/Jaipur (3 TUD 70).
2. AC AE V/s Shri Ram Refrigeration Ind., DB Appeal no. 216/2004/Jaipur (17 TUD 189).

6. Heard the learned counsels from both the sides and perused the record.

7. In the RTB judgment as quoted by the learned counsel for the respondent, wherein the present respondent was also a party, it has unequivocally been held by the Tax Board that transactions relating to replacement of defective compressors with another repaired compressors from the floating stock after collecting fixed repair/rebuild charges would not be in the nature of 'sale'. The relevant portion of the judgment in the case of CTO Vs. Kirloskar Bros. (Supra) is reproduced hereunder:-


"37. As regard the first point whether the transactions in question were in the nature of 'sale' within the meaning of section 2(o) of the Act, we need to appreciate the mode of dealing between the companies and their customers. In the facts on record, it has been the admitted case between the parties that the companies accept DC of its own customers after the expiry of the period of warranty and immediately replaces it from its floating stock by RC of the same model, of course with a different S.No., after collecting fixed repair/rebuilt charges. It is also not disputed that the companies send all DC to their respective Service Centres for repair/rebuilding and receive the same back fully repaired/rebuilt after 4-6 weeks. It is also found true that all DC when these are received back duly repaired/rebuilt are entered in the Register kept for this purpose and properly accounted for. In the light of these facts, it can be safely inferred that the ownership of DC is not transferred by the customers in favour of the companies. They however, appear to be handing over their DC only for getting these back duly repaired/rebuilt; knowing fully well that the intended


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repair/rebuilding of DC would cost them certain repair/rebuilding.

38. Property in goods can pass to another only when the transferee acquired ownership over the article transferred to him along with the right to sell it further for a valuable consideration, in this case, the customers never handed over their DC to the companies after receiving any valuable consideration from the companies but they did so only in the hope of getting their DC back after due repair/rebuilding. Similarly, the companies provided another RC of the same model in exchange of DC to the customers without accepting any valuable consideration for the same and, therefore, such a mode of dealing between the companies and their customers with consent cannot be interpreted as the transactions of sale or purchase under the law. Even if, the assertion of the AA that the companies were engaged in the sale of their RC is accepted for argument's sake, it can not be said that any valuable consideration in law was ever received by the companies while providing RC to the customers. Valuable consideration in law, as has been held by the Hon'ble Supreme Court of India and many other Hon'ble High Courts in the cases referred to above in earlier paras could only mean money paid or promised. Thus viewed any consideration paid partly in cash and partly in kind cannot be taken lawfully as a valuable consideration relating to transfer of goods from one person to another. In this view of the matter, we are of the view that in all these cases, the replacement by way of exchange of DC by RC seems to have been provided by the companies instantly after collecting fixed repair/rebuild charges without waiting for actual repair time and, therefore, such a mode of dealing between the companies and their customers can be best be taken as a transaction of barter but surely not of 'sale'.

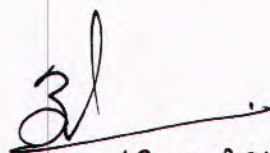
39. In the light of above, we answer the first point in the negative by holding that the transactions in question were not in the nature of 'sale' because of there being no material on record to suggest that any price on transfer of property in goods either for DC or RC was ever paid or promised to be paid in monetary terms by either party."


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8. The fact of the present case are *para materia* with that of the cases cited/discussed above. Therefore, it is held that the transactions in questions were not in the nature of 'sale' because there is no material on record or circumstantial evidence to adduce finding of the assessing authority that a certain price was paid or promised to be paid in monetary terms by either party on transfer of property in goods either for the defective compressor or the repaired/rebuilt compressor. So, the appellate authority has rightly set aside the tax, interest and penalty.

9. Accordingly, the appellate order is confirmed and appeal is rejected.

10. Order pronounced.



19.01.2018

(Omkar Singh Ashiya)
Member