राजस्थान कर बोर्ड, अजमेर

अपील संख्या – 212/2010/जयपुर.

मैसर्स मोहन लाल अशोक कुमार, जयपुर. .....अपीलार्थी.

बनाम

अतिरिक्त आयुक्त (वैट एण्ड आई.टी.), राज. जयपुर. .....प्रत्यर्थी.

खण्डपीठ
श्री खेमराज, सदस्य
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उपस्थित : :

श्री विवेक सिंघल, अभिभाषक .....अपीलार्थी की ओर से.

श्री रामकरण सिंह,
उप–राजकीय अभिभाषक .....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 20/10/2016

निर्णय

1. यह अपील अपीलार्थी व्यवहारी द्वारा अतिरिक्त आयुक्त (वैट एण्ड आई. टी.), वाणिज्यिक कर विभाग, जयपुर के आदेश संख्या पी.5(सी)143/टैक्स रेट/एल/सीसीटी/08 आदेश दिनांक 16.11.2009 के विरूद्ध प्रस्तुत की गई है। अतिरिक्त आयुक्त (वैट एण्ड आई.टी.), वाणिज्यिक कर विभाग, जयपुर ने उक्त आदेश के द्वारा राजस्थान मूल्य परिवर्धित कर अधिनियम 2003 (जिसे आगे **'वेट अधिनियम'** कहा जायेगा) की धारा 36 के तहत पारित आदेश में अपीलार्थी द्वारा प्रस्तुत विवादित प्रश्न का विनिश्चयन निम्न प्रकार किया है :–

> Hence, the disputed question mentioned above is determined as under :- **"Gold coins are not covered in the goods notified under the Composition Scheme for Saraffa Dealers, 2006 and the tax rate of Gold coins, being covered Bullion is 1% as mentioned at S.No. 1 of Schedule III of RVAT Act, 2003 hence, taxable@1%."**

अपीलार्थी व्यवहारी ने इस विनिश्चयन से व्यथित होकर अपील प्रस्तुत की है।

2. अपीलार्थी व्यवहारी के विद्वान अभिभाषक ने बहस में कथन किया कि That the order passed by the learned Additional Commissioner (VAT & IT), Commercial Taxes Department, Rajasthan holding that the gold coins are not notified under the Composition Scheme for Sarafa Dealers 2006 and the tax rate of the gold coins being covered bullion as 1% as mentioned as S.No. 1 of Schedule-III of the Rajasthan Value Added Tax Act, 2003, hence taxable at the rate of 1% is entirely illegal, unjustified, against the provisions of law and facts of the case.

लगातार.....2

That the State Government had issued the Composition Scheme on 06.05.2006 and the Scheme provided upon for composition of amount in lieu of tax liability in respect of following goods namely,

"All kinds of jewellery ornaments, articles made of gold, silver and other precious metal and alloys thereof with or without precious or semi precious stones including diamonds but excluding bullion".

That the applicant submitted an application for determination rate of tax whether the gold coins "not currency" are covered by the goods notified under the Composition Scheme for Sarafa Dealers, 2006 and if not then what would be the rate of tax of the said items.

That the learned Additional Commissioner (VAT & IT), without considering the submissions made has wrongly held articles made by the applicant on which the God, Goddess and other pictures, monogram of business house would be covered by the term 'bullion'.

That the article of gold is not considered as currency coins in the market either by the seller or the purchasers and is normally used for the purpose of gifts etc.

That the term bullion coin and articles are neither defined in the Notification issued nor defined under the Act or the Rules made there under.

The term bullion in the dictionary is mainly considered as metal in un-coined gold or silver in bars or ingots and metal in mass. Mass means, lumps of metal.

The term coin has been defined in the dictionaries as flat piece of metal used by the Government authorities as money or is having an official stamp for use as money.

That as per both the above submissions, it is clear that the goods mainly the article sold is neither used as money nor stamped any of the Government authorities to be used as money. Therefore, it at any point of time, cannot be considered as coin (currency) and also that it is not a metal which is in the form of bar, ingot or mass. On the contrary it is an article made out of gold which after proper crafting and hand carvings and also use of machines has pictures of Indian devotees, at times monograms of big business houses or the names of couples of persons who wants to get it engraved by the various craftsmen and the artisans, employees to make the article.

As such, the learned Additional Commissioner (VAT & IT), without considering the peculiar facts has wrongly considered it to be gold in form of mass.

लगातार.....3

That the learned Additional Commissioner (VAT & IT), has wrongly relied on the decision given by the Hon'ble Supreme Court in the case of G.S. Pai as reported in 45 STC 58. It appears that without reading the judgment, he has referred to the opinion given by the learned departmental committee and has copied what Mr. Sarkar has mentioned in the book and not decided in the judgment given, which says contrary to what has been mentioned in the order passed. The fact that gold coin has been held to be gold in mass is also contrary to the meaning of the term mass and totally against the fact that the goods sold by the applicant are not in the form of mass, but are totally different articles made by artisans and craftsmen out of this gold and is never sold, considered or used by the applicant as currency nor has been authorised by the Government to be used as currency. Therefore, the order passed is totally illegal, unjustified and against the provisions of law.

बहस में विद्वान अभिभाषक ने निम्न न्यायिक दृष्टान्त प्रस्तुत किये :–

A. **डिप्टी कमिश्नर सेल्स टैक्स एर्नाकुलम बनाम जी.एस.पाई एण्ड कम्पनी निर्णय दिनांक 15.10.1979 न्यायिक दृष्टान्त (1980) 45 एस.टी.सी. 58 (सुप्रीम कोर्ट)**

B. **एचडीएफसी बैंक लि., बनाम सहायक आयुक्त, एर्नाकुलम व अन्य निर्णय दिनांक 13.07.2010 न्यायिक दृष्टान्त (2010) 36 वी.एस.टी. 338 (केरला)**

3. बहस के अन्त में अपीलार्थी के विद्वान अभिभाषक द्वारा अपील स्वीकार करने की प्रार्थना की गई।

4. प्रत्यर्थी की ओर से विद्वान उप–राजकीय अभिभाषक ने अतिरिक्त आयुक्त वैट एण्ड आई टी के आदेश का समर्थन किया।

5. उभयपक्षों की बहस पर मनन किया गया व पत्रावली का अवलोकन किया गया। हस्तगत प्रकरण में विवादित बिन्दु यह है कि अपीलार्थी द्वारा सोने के सिक्के जो मुद्रा नहीं है वे सर्राफा प्रशमन योजना 2006 में माल की परिभाषा में आच्छादित है अथवा नहीं तथा उस पर कर की क्या दर लागू होगी ?

6. अपीलार्थी के विद्वान अभिभाषक ने बहस में कथन किया कि अपीलार्थी द्वारा सोने के सिक्के जिन पर विभिन्न प्रकार के मार्क/चिन्ह अंकित होते है यथा ओम, श्री, स्वास्तिक निशान, कमल का निशान, गणेश जी का मूर्ति चिन्ह, लक्ष्मी जी का मूर्ति चिन्ह, हनुमान जी का मूर्ति चिन्ह, गोविन्द देवजी का मूर्ति चिन्ह, श्रीनाथ जी का मूर्ति चिन्ह व अन्य अंकित चिन्ह के सिक्कों का विक्रय किया जाता है। राज्य सरकार द्वारा सर्राफा प्रशमन योजना 2006 अधिसूचना दिनांक 06.05.2006 के द्वारा अधिसूचित की गई है। अधिसूचना क्रमांक एफ. 12(63)एफडी/टैक्स/2005–39 दिनांक 06.05.2006 का सुसंगत अंश निम्न प्रकार है :–

लगातार.....4

In exercise of powers conferred by section 5 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 notifies the "Composition Scheme for Saraffa Dealers, 2006" (hereinafter referred to as 'the scheme'), and permits such dealers to opt for composition amount in lieu of their tax liability in respect of their sales of all kinds of jewellery, ornaments, **articles made of gold**, silver and other precious metals and alloys thereof with or without precious or semi-precious stones including diamonds **but excluding bullion** within the State on payment of composition amount determined on the basis of their gross turnover of the relevant year as per their books of accounts in the manner and subject to the conditions as specified hereunder, namely:

7. अधिसूचना में प्रयुक्त शब्दावली के अनुसार **articles made of gold** का विक्रय किये जाने पर प्रशमन योजना में विहित कर दायित्व लागू होता है। यदि **bullion** का विक्रय किया जाता है तो प्रशमन योजना में विहित कर दायित्व लागू नहीं होता है।

8. अपीलार्थी व्यवहारी द्वारा बेचे जाने वाले विभिन्न चिन्हों वाले सोने के सिक्के **articles made of gold** है या **bullion** है, इस प्रश्न का निर्णय किया जाना है।

9. अपीलार्थी व्यवहारी के विद्वान अभिभाषक द्वारा प्रस्तुत दोनों न्यायिक दृष्टान्तो में दी गई व्यवस्था निम्न प्रकार है। **जी.एस.पाई एण्ड कम्पनी** के मामले में माननीय उच्चतम न्यायालय द्वारा दी गई व्यवस्था निम्न प्रकार है :–

"We will first consider the question whether the ornaments and other articles of gold purchased by the assessee fall within the description of "bullion and specie" given in entry 56. There are two expressions in this entry which require consideration; one is "bullion" and the other is "specie". Now there is one cardinal rule of interpretation which has always to be borne in mind while interpreting entries in sales tax legislation and it is that the words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. We must give the words used by the legislature their popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". The word "bullion" must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with this commodity would ascribe to it. Now it is obvious that "bullion" in its popular

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sense cannot include ornaments or other articles of gold. "Bullion", according to its plain ordinary meaning, means gold or silver in the mass. It connotes gold or silver regarded as raw material and it may be either in the form of raw gold and silver or ingots or bars of gold or silver. The Shorter Oxford Dictionary gives the meaning of "bullion" as "gold or silver in the lump; also applied to coined or manufactured gold or silver considered as raw material". So also in Jowitt's Dictionary of English Law and Wharton's Law Lexicon we find that the following meaning is given for the word "bullion". "uncoined gold and silver in the mass. These metals are called so, either when melted from the native ore and not perfectly refined, or where they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness". It would, therefore, be seen that ornaments and other articles of gold cannot be regarded as "bullion" because, even if old and antiquated, they are not raw or unwrought gold or gold in the mass, but they represent manufactured or finished products of gold."

10. माननीय केरला उच्च न्यायालय द्वारा **एचडीएफसी बैंक लिमिटेड** के प्रकरण में दिये गये निर्णय में दी गई व्यवस्था निम्न प्रकार है :–

"Held, dismissing the appeal, that admittedly, the coins of the bank which sought the clarification as well as those of the appellant-bank were polished, minted products, equally attractive and were manufactured by the very same company. It was seen the website (a publication by the association including the manufacturer), that cast gold bars were minted to produce polished gold slabs in decorative forms. The smaller sizes of minted gold, i.e., pieces of 5 gm., 8 gm., 10 gm could not be treated as gold in unwrought form because in the website itself the process of manufacture of minted bars was described as processing from gold obtained in unwrought form after manufacturing through casting. It was specifically mentioned in the website and it was common knowledge that minted pendant bars attached with hook or hanger were worn by the ladies. It was also stated in the website that it was the practice in some countries to treat minted forms of gold as "semi-manufactured forms" or as "articles of precious metal". Minted rectangular forms of gold made with fine finish and markings with size of 5 gm., 8 gm., 10 gm., etc., were purchased only to be worn or to be gifted or purchased and retained for the finish and beauty and not for use as a raw material in the manufacture of gold ornaments which alone was overed by the Second Schedule, entry 1, until the amendment made effective from April 1, 2009. The items involved in this case were finished small sizes of gold pieces made in ornamental form for use as such, which

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were items obtained after minting process where markings, engravings and printing were given for the look and shape of the product. Therefore the clarification by the Commissioner under section 94 clarifying that 10 gm. gold rectangular bar marketed by the bank fell under HSN Code 7108 13 00 applied to the appellant's case also in respect of gold coins of similar size, i.e., 5 gm., 8 gm., 10 gm., etc., marketed by them.

11. अतिरिक्त आयुक्त वैट एण्ड आई टी ने जी.एस.पाई के मामले में माननीय उच्चतम न्यायालय द्वारा दी गई व्यवस्था को सही प्रकार से निर्वचित नहीं किया है।

12 उपरोक्त पैरा 9 व 10 में दिये गये निर्णयों की व्यवस्था के प्रकाश में यह निष्कर्षित किया जाता है कि अपीलार्थी व्यवहारी द्वारा विभिन्न प्रकार के चिन्ह अंकित किये हुए सोने के सिक्के **articles made of gold** है। अपीलार्थी व्यवहारी द्वारा विभिन्न प्रकार के चिन्ह अंकित किये हुए सोने के सिक्के **Bullion** नहीं है।

13. उपरोक्तानुसार अपील स्वीकार करते हुए निस्तारण किया जाता है।

14. निर्णय सुनाया गया।

29/10/2014

(मनोहर पुरी)
सदस्य

(खेमराज)
अध्यक्ष