

Rajasthan Tax Board, Ajmer

Appeal No. 245/2012/Alwar

Appeal No. 308/2012/Alwar

Commercial Taxes Officer,
Special Circle-II, Bhiwadi

...Appellant

VERSUS

M/s Glamouroom Taps Pvt. Ltd.
Chopanki Industrial Area,
Bhiwadi

.....Respondent

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Ramkaran Singh,
Dy. Govt. Advocate

for Appellant

Shri Vivek Singhal,
Advocate

for Respondent

Dated : 04.05.2018

JUDGMENT

1. These appeals have been filed by the appellant Revenue (hereinafter called the "appellant"), against orders of the Deputy Commissioner (Appeals), Commercial Tax Department, Alwar (hereinafter called the "appellate authority") dated 07.06.2011, who accepted the appeals against the assessment orders passed by Assistant Commissioner, Commercial Taxes, Special Circle-II, Bhiwadi (hereinafter called the "assessing officer" or "AO") dated 25.03.2010, under section 23 of the Rajasthan Valued Added Tax Act, 2003 (hereinafter called the "RVAT Act") and under Section 9 of the Central Sales Tax Act, 1956 (hereinafter called the "CST Act"). The details of the Appellate orders as well as the AO's orders, are as under:



Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Officer's order Details		
		Appeal No.	order dated	order dated	disputed ITC	disputed interest
245/2012/Alwar	2007-08	27/RVAT/2010-11	07.06.2011	25.03.2010	129526	0
308/2012/Alwar	2007-08	28/CST/2010-11	07.06.2011	25.03.2010	129526	292192

2. Brief facts leading to the present appeals are that the appellant is a manufacturer of Bath wares, taps and fittings etc., and in the course of its business has purchased Diesel Generating set from M/s Sudhir Power Project Pvt. Ltd., Jaipur and claimed an ITC of Rs. 1,29,526/- on purchase of these goods, treating the same as 'Capital Goods'. The assessing officer while finalizing the assessment for the year 2007-08 disallowed this ITC on the premise that such DG set cannot be treated as plant and machinery. As the ITC was disallowed, therefore, the ITC which was adjusted against the CST tax liability got reduced and on short deposit the CST an interest amounting Rs. 2,92,192/- was also levied.
3. Aggrieved of the assessment orders, the appellant preferred appeals before the appellate authority who set aside the levy of tax & interest and accepted the appeals.
4. The learned deputy government advocate appearing for the appellant submits that the DG set purchased by the respondent was not being used as plant and machinery for manufacture of the goods and instead it was being used for generation of electricity, therefore, it would not qualify to be treated as plant and machinery. He further requests to set aside the appellate order and to restore the order of the assessing officer.
5. Per contra. the learned advocate appearing for the respondent submits that an 'Explanation' has been added after clause (7) of section 2 of the RVAT Act, whereby the generating set for generation of electrical energy to be used in manufacturing have been treated as capital goods. Since, the explanation



becomes applicable from the date of enactment of the original section. therefore. this shall apply in the instant case also. He, therefore, request to reject the appeals of the revenue.

6. I have carefully gone through the submission from both the parties and perused the relevant record. By the Rajasthan Finance Act, 2016, the section 2 of the RVAT Act has been amended and after the existing clause (7) an explanation has been added as under:

"3. Amendment of section, 2 Rajasthan Act No. 4 of 2003.- After the existing clause (7) and before the existing clause (8) of section 2 of the Rajasthan Value Added Tax Act, 2003 (Act No. 4 of 2003), hereinafter in this Chapter referred to as the principal Act, the following shall be inserted, namely:-

***Explanation:-** For the purpose of this clause, generating set for generation of electrical energy to be used in manufacturing shall be treated as capital goods."*

For this amendment, the Statement of Objects and Reasons for the said amendment has been given as under:

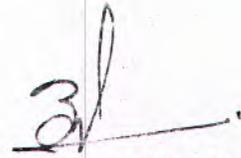
"Clause (7) of section 2 of the Rajasthan Value Added Tax Act, 2003 defines capital goods. Presently, there are doubts regarding inclusion of generating set in the definition of capital goods. With a view to explain the situation, clause (7) of section 2 of the Rajasthan Value Added Tax Act, 2003 is proposed to be amended by inserting an explanation."

7. As per the rule of interpretation, it is settled law that any explanatory enactment is generally added to clarify the statute and is retrospective, therefore; the provisions of Section 2(7) must be regulated in terms of the explanation added with retrospective effect from the date on which Clause (7) of Section 2 came into force. In the present case, though the explanation has been added by the Rajasthan Finance Act, 2016 which came



into effect on 08.04.2016, but the said 'Explanation' shall be deemed to have come into effect from the date of incorporation of clause (7) of section 2 of the Act. Since, as per the said explanation the generating sets for generation of electrical energy have been treated as capital goods, therefore, the ITC shall be available on such purchase. The appellate authority has rightly set aside the disallowance of the ITC by the assessing officer, therefore, the appellate orders deserve to be upheld.

8. As discussed in foregoing paras, the impugned appellate orders are confirmed and appeals of the revenue are disallowed.
9. Order pronounced.


04.05.2018

(Omkar Singh Ashiya)
Member