

Rajasthan Tax Board, Ajmer

Appeal No. 263/2008/Jaipur

M/s Triveni Industries,
Shahpura, Jaipur

...Appellant

VERSUS

Commercial Taxes Officer,
Special Circle-IV, Jaipur

.....Respondents

D.B.

SHRI V. SRINIVAS, CHAIRMAN

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri D. Kumar, Advocate

for Appellant

Shri Anil Pokhrana,

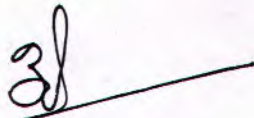
Dy. Govt. Advocate

for Respondent

Dated : 27/03/2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant"), against order of the Additional Commissioner (Appeals), Commercial Taxes Department, Rajasthan, Jaipur (hereinafter called the "appellate authority"), dated 13.09.2007 who partly accepted the appeal and remanded the matter back to the assessing officer to ascertain the quantum of the goods in question i.e. Stone Grit sold for construction of roads and for construction of buildings, against order of the Commercial Taxes Officer, Special Circle-IV, Jaipur, (hereinafter called the "assessing officer" or "AO") dated 14.08.2002 passed under section 30/37 of the Rajasthan Sales Tax Act, 1994 (hereinafter called the "the Act") wherein he has levied a differential tax treating the goods (Stone Grit) as building material and reduced the benefits of tax exemption as





available to the assessee under the Sales Tax Incentive Scheme, 1987 (hereinafter called the "Incentive Scheme").

2. Brief facts leading to the present appeal are that the appellant is a partnership firm dealing in stone grit and stone dust etc. and availing exemption benefit under the Incentive Scheme. For the assessment year 1999-2000, the assessment of the appellant was finalized on 08.01.2002 wherein tax on stone grit was calculated and assessed @10% and the same was adjusted against the tax exemption available under the Incentive Scheme as sanctioned to the appellant. Later, the AO apparently on the basis of an audit objection, issued a notice under section 30 & 37 of the Act mentioning therein that the goods sold by him were in-fact the building material which is taxable @ 12%, therefore, a levy of differential tax of 2% was proposed, and accordingly the assessment was finalized on 14.08.2002 as proposed in the notice. This additional amount of tax so levied was reduced from the benefit available to the appellant under the Incentive Scheme.
3. Being aggrieved of the AO's order the appellant filed an appeal before the appellate authority who partly accepted the same vide his order dated 13.09.2007 and remanded back the matter to AO ascertain the quantum of stone grit sold for the purpose of construction of roads and that for the construction of buildings. Against this appellate order, the instant appeal has been filed before the Rajasthan Tax Board under section 83 of the RVAT Act, 2003.
4. Learned counsel for the appellant submits that AO has initiated action u/s 30 & 37 of the Act whereas both the sections can't be invoked simultaneously. As the section 30 pertains to the 'escaped assessment' whereas section 37 relates to 'rectification of mistakes'. He further submits that as the goods in question i.e. stone grit which is used in road construction

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work, so it can't be categorized as 'building material', therefore there was no reason to levy tax at higher of 12% instead of 10% payable under the residual entry. It was also highlighted that as the appellate order is dated 13.09.2007 so adding a reasonable time for communication of the order to AO, the consequential assessment order must have been passed within two years of receipt of the order to the AO but no order till date has been passed, and now matter is barred by time limit, therefore, the appeal may be accepted. He cited following judgments to support his contentions: -

- 1) M/s Pratap Rajasthan Special Steels Ltd. V/s The Rajasthan Tax Board & Ors.; (2017) 15 RGSTR 1 (RHC).
- 2) Directors General of Supplies & Disposal V/s CTO; (1993) 90 STC 341 (RHC).
- 3) ACTO V/s Sri Ram Stone Crushing Co.; (1989) 6 RTJS 279 (STT).
- 4) CTO V/s Deepak Textiles; (2000) 27 RTJS 158 (RHC).
- 5) ACTO V/s Makkad Plastic Agencies; (2011) 29 TUD 253.

5. Learned Deputy Government Advocate appearing for the respondent revenue confirms that the consequential order has not been passed by the AO in pursuance of the appellate order.
6. Heard the learned counsels for both the parties and also perused the relevant record and gone through the judgments as referred by the appellant. In the instant case, the AO has not passed any order to give effect to the appellate order, therefore, the compliance of the appellate order has not been made and now owing to the time limit of two years wherein the order ought to have been passed, no assessment order can be passed.
7. In the referred judgment of M/s Pratap Rajasthan Special Steels Ltd. V/s The Rajasthan Tax Board & Ors.: (2017) 15 RGSTR 1, the Hon'ble Rajasthan High Court has held that the order has to be passed within the prescribed period of two

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years from the date the order so communicated to the AO and since no order was passed within that time period, therefore, the petition was held to be infructuous. In this judgment the Hon'ble Court has held as under: -

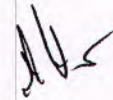
" it was required to pass an order, may be not within 30 days but at-least within the period prescribed under the law in sec. 10-B(2) i.e. two years from the date the order was communicated to the AO and since no order has been passed, the present petition in my view becomes infructuous.

Since the Act does not permit any order which could be passed subsequent to the period already elapsed after having become time barred, the directions given by the Tax Board becomes meaningless as no decision can be given when the assessment has already become time barred."

8. So, without entering into merits of the case or the controversy involved therein, it is held that as in compliance of the appellate order no order has been passed within the stipulated time limit, or as a matter of fact hasn't been passed till date, therefore, this appeal has become infructuous and resultantly, stands rejected.
10. Order pronounced.



(Omkar Singh Ashiya)
Member



(V. Srinivas)
Chairman