

Rajasthan Tax Board, Ajmer

CTO AE, Hanumangarh Vs. Janta Agri. Works, Sangaria	1. Appeal No. 40/2008/HANMG
CTO AE, Hanumangarh Vs. Balbeer Repairing Works, Sangaria	2. Appeal No. 41/2008/HANMG
CTO AE, Hanumangarh Vs. Sant Krishi Udyog, Rawatsar	3. Appeal No. 42/2008/HANMG
CTO AE, Hanumangarh Vs. Samta Krishi Udyog, Rawatsar	4. Appeal No. 43/2008/HANMG
CTO AE, Hanumangarh Vs. Sadhu Singh Krishi Udyog, Sangaria	5. Appeal No. 44/2008/HANMG
CTO AE, Hanumangarh Vs. Shrawan Singh & Sons, Sangaria	6. Appeal No. 45/2008/HANMG
CTO AE, Hanumangarh Vs. Kalsi Agro Industries, Sangaria	7. Appeal No. 46/2008/HANMG
CTO AE, Hanumangarh Vs. Kartar Agri Wroks, Sangaria	8. Appeal No. 58/2008/HANMG
CTO AE, Hanumangarh Vs. Khandelia Oil & General Mills, SGNR	9. Appeal No. 2099/2007/SGNR
CTO WC & LT, Sriganganagar Vs. J.R. Construction Company, Suratgarh	10. Appeal No. 2160/2007/SGNR

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Anil Pokharna,
Dy. Govt. Advocate

Shri Suresh Ojha, Advocate

Shri V.K. Pareek, Advocate

for Appellants
for Respondents
in Appeal No. 42 and 43/2008
for respondents
in Appeal No.
40,41,44,45,46,58/2008 &
2099/2007, 2160/2007

Dated : 20 /03/2018

JUDGMENT

1. These appeals have been filed by the Revenue under section 24 of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (hereinafter called the "Act"), against order of the Deputy Commissioner (Appeals), Commercial Taxes Department,



Bikaner (hereinafter called the "appellate authority") who while disposing off these appeals, which were filed against respective orders of the Commercial Taxes Officers of the Anti-evasion wing in first nine appeals and in appeal no. 2160/2007 it was CTO Works Tax & Leasing Tax, Suratgarh (hereinafter called the 'Assessing Authorities' or the 'AOs'), has accepted all the appeals vide order dated 31.07.2008 and set aside the levies as imposed under the assessment orders, the details of the same is as under:-

Appeal No.	Appellate Authority's Order Details		Assessing Authority's Order Details			
	Appeal No.	Date of Order	Assessment Year & Date of Order	Entry Tax (Rs.)	Interest (Rs.)	Penalty (Rs.)
42/2008	103/ETLA/HMO/07-08	31.08.2007	2004-05 08.01.2007	20974	5034	1000
43/2008	102/ETLA/HMO/07-08	31.08.2007	2004-05 08.01.2007	10017	2405	1000
40/2008	315/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	70888	17016	1000
41/2008	311/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	39735	9528	1000
44/2008	312/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	96982	23280	1000
45/2008	314/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	61234	9888	1000
46/2008	313/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	124937	29976	1000
58/2008	317/ETLA/HMO/06-07	31.08.2007	2004-05 21.12.2006	25952	6240	1000
2099/07	219/ETLA/SGNR/05-06	31.08.2007	2002-03 28.02.2005	35060	16004	1000
2160/07	157/ETLA/SOG/06-07	31.08.2007	2003-04 04-08-2006	41000	9840	61500

2. Since common issues are involved in all these appeals, therefore, the same are disposed off with a common order. Copy of the judgment be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the appellants brought into the local areas the goods taxable under the Act, but despite having a liability to get themselves registered and to pay the due taxes, they neither took registration under the Act nor paid the tax. The assessing authorities apart from imposing



the penalty under section 35 for non-registration, assessed the respondent dealers under section 12 of the Act and levied entry tax and interest payable on that. However, in appeal number 2160/2007 a penalty u/s 12 (5) was also imposed.

4. Being aggrieved of the assessment orders, the respondents preferred appeals under section 23 of the Act before the appellate authority, who vide his common order dated 31.08.2007, has accepted all the appeals on the ground that the said Act has been declared to be ultra vires by the Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No. 21/2002, vide judgment dated 21.08.2007. The Revenue being aggrieved of the appellate order has preferred these appeals along with the applications for condonation of delay.
5. At the outset, the learned Advocate for the appellants in Appeal No. 42 & 43/2008 Shri Suresh Ojha, made a preliminary objection that since the appeals have not been filed within the period of 60 days, therefore, these are barred by the limitation, hence, liable to be rejected on this ground alone. Learned Advocate for the respondents in other appeals, Shri V.K. Pareek supported Mr. Ojha's preliminary objection and submits that there is no note by the Registry about the delay or the fact that affidavits were not submitted alongwith the applications, therefore, the appeals were in defect and that a valid affidavit was not submitted by the appellants, therefore, in light of the preliminary objections itself the appeals are liable to be rejected.
6. Learned Deputy Government Advocate appearing for the appellant Revenue submits that the applications for condonation of delay have been duly filed by the appellants along with the affidavit in support of the applications, therefore, the objection raised by the learned advocates for the respondents is baseless and deserves to be summarily rejected.

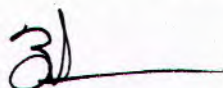
31

He further submits that these appeals have been filed after the stipulated period of 60 days and there were genuine reasons for delay as mentioned in the applications for condonation of delay, therefore, the delay may be condoned.

7. We have carefully gone through the preliminary objections as raised by the respondents and perused the relevant record. In this regard, it would be useful to first peruse the relevant provision of the Act for late filing of the appeal as contained in sub-section (2) of section 24 of the Act, and the same is reproduced hereunder:

"(2) The Tax Board may admit an appeal preferred after the period of sixty days referred to in sub-section (1), if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period."

8. This fact is not in dispute that these appeals have been filed before the Tax Board on 07.01.2008. The appellate order is dated 31.08.2007 and the same has been communicated to the respective assessing authorities on 10.09.2007. For filing of the Second Appeal, the necessary permission was granted by the Competent Authority i.e. the Deputy Commissioner (Adm), Sri Ganganagar, vide order dated 20.11.2007. Though, for appeals no. 2099/2007 and 2160/2007 the date of sanction is 03.11.2007 & 16.11.2007 and the date of filing of these appeals before the Tax Board is 13.11.2007 & 19.11.2007 respectively. It appears from the sequence of the events and the date of filing of these appeals that the necessary permission to file these appeals was given after about two months of receipt of the appellate order by the assessing authorities. As stated in the application for condonation of delay, the competent authority seems to have taken a bit longer time in view of the fact that the Act had been held to be ultra vires by the Hon'ble High Court, therefore, there was delay into decide as to whether any appeal has to be preferred or not.



9. Looking to the fact that the situation regarding constitutional validity of the Act was still fluid because the matter had to be finally decided by the Hon'ble Apex Court, therefore, there seems to be a rationale in argument of the learned Deputy Government Advocate that the matter took a bit longer time to be decided as to whether any appeal was to be filed before the Tax Board or not, and in the given circumstances, the applications for condonation of delay are accepted and the preliminary objection as raised by the respondents is overruled.
10. Moreover, the sub-section (2) of section 24 of the Act, fully empowers the Tax Board to admit the appeal if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period and I am satisfied from the cause as advanced by the appellants to be the sufficient one, hence the appeals stand admitted after condoning the delay.
11. Learned Deputy Government Advocate appearing for the appellant revenue submitted that the constitutional validity of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 has been upheld by the Constitution Bench of the Hon'ble Supreme Court in Civil Appeal number 3453/2002 'Jindal Stainless Ltd. & Anr. Vs. State of Haryana & Ors' Judgment dated 11.09.2016, therefore, the appellate order deserves to be set aside.
12. Learned advocates appearing for the respondents submit that the respondent dealers had in fact brought some goods liable to tax under the Act but by not knowing the applicability of the Entry Tax Law and their liability to pay tax on such imports, they could not get registration and pay tax accordingly. It was further argued that in the present cases, the Anti Evasion Authorities have decided these cases (except for the Appeal No. 2160/2007/SGNR) and assessed the respondent dealers to tax, interest and penalty, though they were not legally authorised to



grant registration to the respondents and to assess their cases, therefore, on this ground the appeals may be disallowed.

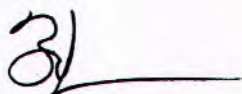
13. The learned Deputy Government Advocate while making rejoinder submits that the Commissioner, Commercial Taxes, Rajasthan, Jaipur (hereinafter called the "Commissioner") has issued a circular no. F16(2)/Tax/CCT/1999/7718 dated 20.01.2003 wherein the jurisdiction of the Officers under the Entry Tax Act has been clarified and the Anti Evasion Officers have been authorized to assess the dealers under the Act of 1999, therefore, the objection as raised by the respondents does not hold any ground and deserves to be rejected.
14. I have gone through the submissions of both sides and perused the record. Firstly, to have a look into the issue if the Anti- Evasion Officers are authorized to assess the dealers under the Act or not and for this, the relevant notifications/circulars have to be perused first. The Commissioner, vide Circular dated 20.01.2003 has clarified the issue as under:

“कतिपय कर निर्धारण अधिकारियों एवं उपायुक्त (प्रशासन) द्वारा यह राय व्यक्त की गई है कि प्रवेश कर अधिनियम के अन्तर्गत कर निर्धारण अधिकारी वही अधिकारी होना चाहिए, जो बिक्री कर अधिनियम के अन्तर्गत कर निर्धारण अधिकारी है।

इस प्रकरण में समग्र रूप से विचार करने के पश्चात् राजस्थान स्थानीय क्षेत्रों में माल के प्रवेश पर कर अधिनियम, 1999, के तहत कर निर्धारण अधिकारी की परिभाषा एवं इस सम्बन्ध में जारी अधिसूचना क्रमांक एफ.4(4)टैक्स/डिवी/99/176 दिनांक 26.03.1999 के मद्देनजर स्पष्ट किया जाता है कि प्रवेश कर अधिनियम के तहत कर निर्धारण अधिकारी वही अधिकारी होगा, जिसे यह राजस्थान विक्रय कर अधिनियम, 1994, के तहत क्षेत्राधिकार प्राप्त है।”

In the above mentioned circular, the Government notification No. F4 (4) FD/Tax Divn. / 99-176 dated 26.03.1999 has been referred to and the same is reproduced hereunder:

"In exercise of the powers conferred by S.22(1), Rajasthan Tax on the Entry of Goods into Local Areas Bill, 1999, (Bill



No. 8 of 1999), read with section 3 of the Rajasthan Provisional Collection of Taxes Act, 1958, the State Govt., hereby authorises all the officers not below the rank of Assistant Commercial Taxes Officer, posted in the Commercial Taxes Deptt, for the purposes of exercise of the powers and discharge the duties and functions in their territorial jurisdiction under the Rajasthan Sales Tax Act, 1994 and the Rajasthan Sales Tax Rules, 1995."

15. So far as the issue of jurisdiction of the Anti-Evasion Officers is concerned, the Commissioner has notified the jurisdiction of various officers including that of the Assistant Commissioner / Commercial Taxes Officer of Anti-Evasion Circles, vide notification no. F3 (A) (9) Juris /Tax/CCT/97-1, dated 01.04.1997 and clause (II) thereof is read as under:

"(II) अपवंचन निरोध वृत्त में पदस्थापित समस्त सहायक आयुक्त/वाणिज्यिक कर अधिकारी, ऐसे व्यवहारियों पर अधिकारिता रखेंगे जिनके विरुद्ध कर के अपवंचन के या कर दायित्व को छिपाने के किसी मामले का जिसमें अधिसूचित कर के अनुसार कर या संदाय न करना भी सम्मिलित है, उस लेखा वर्ष के सम्बन्ध में, जिससे कि ऐसा अपवंचन या छिपाया जाना सम्बन्धित है, निर्धारण, शास्ति और ब्याज के विषयों के सम्बन्ध में, उनके द्वारा या उनके वृत्त में वाणिज्यिक कर निरीक्षक से अनिम्न स्तर के उनके अधीनस्थ किसी भी अधिकारी द्वारा पता लगाया गया हो।"

Since the Rule 4(1) of the Rajasthan Tax on Entry of Goods into Local Areas Rules, 1999 (hereinafter called the "Entry Tax Rules") specifically provides that the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, having territorial jurisdiction over principal place of business, or any other officer not below the rank of Assistant Commercial Taxes Officer, authorized specially or generally by the Commissioner, shall be the authority competent to grant registration to the dealer, and that the AC/CTO of Anti-Evasion Circle having territorial jurisdiction over principal place of business of the

3/7

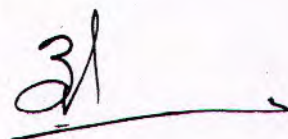
dealer has been authorized by the Commissioner by notification dated 01.04.1997 for exercising the jurisdiction, therefore, the Assessing Authorities in the instant appeals are held to be competent to exercise the powers under the RST Act 1994 and by virtue of Section 45 of the Act of 1999 the provisions of the RST Act apply *mutatis mutandis* for all other incidental and miscellaneous matters not provided for in the Act of 1999, therefore, the Anti-Evasion officers as authorized by notification dated 01.04.1997, are held to be empowered to exercise jurisdiction over the dealers who have evaded or avoided the tax in any manner and in case the dealer has not taken the registration under the Entry Tax Act, then such officer(s) can also impose penalty under Section 35(1)(b) for not getting the registration by such dealer.

16. In the instant cases, since the dealers despite having brought the taxable goods into the local areas, have failed to pay the tax to the exchequer, therefore, Entry Tax and interest as levied by the Assessing Authorities was just and proper and well in accordance with the law.
17. However, in Appeal No. 2160/2007/SGNR an issue of imposition of penalty under section 12(5) of the Act is also involved. On perusal of AO's file, it is found that no specific notice has been issued to the dealer in this regard. On the case file, though one notice dated 10.07.2006 is available in which only record pertaining to the year 2003-04 has been directed to be produced before the AO and there is no specific mention about the show cause about levy of penalty. This is a cardinal principle of natural justice that for imposition of any penalty, the person must be given an opportunity to be heard, however, in the instant appeal no specific notice has been given to the assessee



therefore, the penalty cannot be sustained in eyes of the law,
hence, the same is set aside.

18. Since the constitutional validity of the Entry Tax Act has been upheld by the Hon'ble Supreme Court in Civil Appeal No. 3453/2002 order dated 11.11.2016 in the case of M/s Jindal Stainless Ltd. & Anr. V/s State of Haryana & Ors., therefore, the order of the appellate authority deserves to be set aside.
19. Accordingly, the Appeal No. 2160/2007/SGNR is partly accepted in which the penalty as imposed by the AO under section 12(5) of the Act is set aside, however, the entry tax and interest as levied in the assessment order is confirmed. Nine other appeals are accepted, and the impugned appellate orders are set aside and consequently the orders of the AOs stand restored.
20. Order pronounced.



(Omkar Singh Ashiya)
Member