

RAJASTHAN TAX BOARD, AJMER

Appeal No. 56/2013/Chittorgarh

M/s UltraTech Cement Ltd.
Chittorgarh.

-----Appellant

Vs

Commissioner,
Commercial Taxes,
Rajasthan, Jaipur

Commercial Tax Officer,
Special Circle, Bhilwara.

-----Respondents

D.B.

Shri Madan Lal Malviya, Member
Shri Omkar Singh Ashiya, Member

Present

Shri M.L Patodi.
Advocate

-----For Appellant

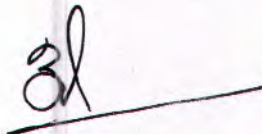
Shri. R.K. Ajmera,
Govt. Advocate

-----For Respondents

Dated: 19.01.2018

Judgment


- 1- This appeal has been filed by the appellant dealer (hereinafter called the "appellant") against order of the Commissioner, Commercial Taxes, Rajasthan, Jaipur (hereinafter called the "Commissioner"), who while exercising powers under section 87 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred as the "Act") directed the assessing authority to revise the assessment order of the appellant, for the year 2005-06 as the same was found to be erroneous and prejudicial to the interest of the State exchequer.
- 2- Brief facts leading to the present appeal are that the State Government had issued a notification No F12(20) FA/Tax/2005-pt-98 dated 02-12-2005, wherein the rate of tax on cement manufactured by a cement unit was reduced to 9% with certain conditions. The appellant who also had a





manufacturing unit in Khor (Madhya Pradesh) brought cement manufactured there, as branch/stock transfer in Rajasthan and sold the same by charging tax at the rate of 9% against the prevailing tax rate of 28%. The assessing authority vide assessment order dated 19.03.2008, though initially levied tax on the sale of cement brought as stock transfer from its Khor unit, at the reduced rate of 9% in light of the notification dated 02.12.2005, but later by rectifying the order u/s 37 of the RST Act, 1994, levied additional tax @ 19% and interest thereon, vide order dated 04.05.2009.

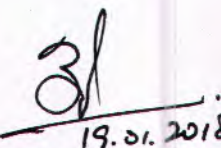
- 3- Aggrieved of this rectification order, the appellant filed an appeal before the Dy Commissioner (Appeal-II), Commercial Taxes, Jaipur, who vide his order dated 29.10.2010 confirmed order of the assessing authority. Aggrieved of the same, the appellant preferred appeal before the Rajasthan Tax Board (in short "Tax Board"), which was decided on 16.08.2012.
- 4- The RTB though accepted this appeal but with directions to the Commissioner to initiate proceeding under section 87 of the Act ("Revision by the Commissioner"). The Commissioner initiated proceeding u/s 87 of the Act and decided it by order dated 31.10.2012 and gave directions to the assessing authority to revise the order dated 19.03.2008 as it was found to be erroneous and prejudicial to the interest of the State exchequer.
- 5- The assessing authority complied with the said directions and passed the consequential order on 19.12.2012 and levied difference tax Rs 20,31,746/- and interest Rs 12,12,060/-. In the meanwhile, the appellant filed a revision petition before the Hon'ble Rajasthan High Court (SB STR no. 171/2012) and the same was dismissed on 25.09.2012. Against this order the SLP filed by the appellant (SLP no 3914/2013) was also dismissed by the Hon'ble Supreme court vide order dated


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23.02.2016. So, the RTB order dated 16.08.2012 attained finality.

- 6- The present appeal lies against order of the Commissioner dated 31.10.2012 which was issued in light of the Tax Board order dated 16.08.2012. As Tax Board order was confirmed by the Hon'ble High Court and further the SLP against High Court order has also been dismissed by the Hon'ble Supreme Court, therefore, nothing survives in the appeal to be decided by the Tax Board.
- 7- However, learned advocate appearing for the appellant argues that the calculation of interest as done by the assessing authority in his order dated 19.12.2012 is not correct, therefore, he requested for recalculation of the interest component. He furnished a calculation sheet showing that excess interest amounting to Rs. 1,14,359/- was charged by the assessing authority.
- 8- This issue essentially relates to the assessment order dated 19.12.2012 which has been passed in light of the Revisional order u/s 87 of the Act and the same is not subject matter of this appeal, therefore, we are not inclined to go into this issue at all. Had the appellant discovered any calculation mistake in the said order, the only recourse available to him was to file rectification application before the assessing authority, as provided under the law.
- 9- Accordingly, the appeal is dismissed being *dehors* the subject matter of the order appealed against.
- 10- Order pronounced.


19.01.2018
(Omkar Singh Ashiya)
Member


19/1/18
(Madan Lal Malviya)
Member