

Rajasthan Tax Board, Aimer

Appeal No. 566/2012/Jaipur

Commercial Taxes Officer,
Anti-Evasion, Circle-II,
Rajasthan, Jaipur

...Appellant

VERSUS

M/s Franco India
Pharmaceuticals Pvt. Ltd.
A-118/188 C, Road No. 7, VKI
Area, Jaipur

.....Respondents

D.B.

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri N.K. Baid,
Dy. Govt. Advocate

for Appellant

Shri D. Kumar, Advocate


for Respondent

Dated : 19.01.2018

JUDGMENT

1. This appeal has been filed by the appellant department (hereinafter called the "appellant"), against order of the Additional Commissioner Appeals, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority") who vide his order dated 09.09.2011 has set aside the assessment order passed by Commercial Taxes Officer, Anti Evasion, Circle-II, Rajasthan, Jaipur (hereinafter called the "assessing authority"), who while finalizing the assessment for the year 2002-03 under section 30 of the Rajasthan Sales Tax Act, 1994 (hereinafter called the "Act") dated 09.11.2010, has levied tax Rs. 1,35,272/-, interest Rs. 95,077/- and imposed penalty of Rs. 2,70,544/-.

2. Brief facts leading to the present appeal are that the assessing authority had finalized the provisional assessment of the dealer under section 28, 65 and 58 of the Act, on 20.11.2003 and created a demand






of Rs. 4,33,316/- comprising tax Rs. 1,35,272/-, interest Rs. 27,500/- and penalty Rs. 2,70,544/-. The assessing authority found that the respondent who deals in purchase and sale of medicines, sold some medicines to its dealers but did not collect any tax thereupon as the medicines in question were supplied to the dealers against replacement of the expired medicines. Aggrieved of the said order, the respondent preferred an appeal before the Additional Commissioner (Appeals), Commercial Taxes Department, Rajasthan, Jaipur, who vide his order dated 09.08.2007 accepted the appeal and held that the medicines supplied by the respondent to its dealers as free replacement against expired medicines, cannot be termed as sale, hence no tax liability arises on such replacement supplies. Though, the appellant had filed an appeal before the Tax Board (Appeal No. 367/2008/Jaipur), but the same was dismissed by order dated 03.10.2012 as being infructuous, because the final assessment was passed by the assessing authority on 09.11.2010.

3. The assessing authority issued a notice to the respondent for finalization of escaped assessment, under section 30 read with section 100 of the RVAT Act, 2003 and by merging the provisional assessment dated 20.11.2003 imposed tax of Rs. 1,35,272/-, interest Rs. 95,077/- and imposed penalty Rs. 2,70,544/- by the order dated 09.11.2010.

4. Learned Deputy Government Advocate appearing for the appellant argues that the respondent has sold some medicines on which no tax was collected, therefore, the imposition of the demand as created by order dated 09.11.2010 was just and proper and the appellate authority has erred to set aside the said order.

5. Shri D. Kumar appearing for the respondent argues that the final assessment order for the year 2002-03 was passed on 16.07.2004 and the provisional assessment order dated 20.11.2003 was not merged into it. The notice for escaped assessment under Section 30 of the RVAT Act, 2003 was issued on 27.11.2009, therefore, the statutory time limit available for initiation any action under section 30 was barred by time limit of five years as prescribed under the Act. He further submitted





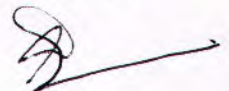
that as the provisional assessment order dated 20.11.2003 was set aside by the appellate authority on 09.08.2007, therefore, there was no occasion to merge that provisional assessment by initiating proceeding under section 30.

6. Heard the learned counsels for the rival parties and perused the record.

7. It is not in dispute that the provisional assessment order dated 20.11.2003 was set aside by the appellate authority vide his order dated 09.08.2007 and the final assessment for the year 2002-03 u/s 29 was completed by the Assistant Commissioner, Special Circle-5, Jaipur (being the regular assessing authority having jurisdiction over the dealer) on 16.07.2004 and the provisional assessment order was not merged into it. However, the assessing authority issued a notice on 27.11.09 u/s 30 of the Act to merge the provisional assessment dated 20.11.2003 into it for ready reference sub-section (3) of section 30 of the Act, is re-produced hereunder: -

"No notice under sub-section (1) and (2) shall be issued in respect of any escaped assessment for any year after the expiry of five years and no assessment under the said sub-sections shall be completed after the expiry of eight years, from the end of the relevant assessment year; but this limitation shall not be applicable to any assessment to be made in consequence of, or to give effect to, any finding or direction contained in order passed by an appellate authority or the Tax Board or a competent court."

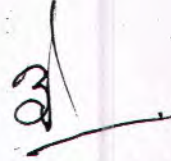
8. As per stipulation of Section 30(3), no notice can be issued after expiry of five years and in present case the notice u/s 30 for the year 2002-03, which in any case must have been issued upto 31.03.2008, was issued on 27.11.2009, so the same is barred by time limit as mandated under sub-section (3) of Section 30 of the Act.



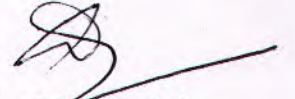
9. In this regard, the judgments quoted by the appellant also give support to the case of the respondent. In these judgments it has been categorically held that if the notice u/s 30 was not issued within a period of five years, then the authority cannot proceed to take any action.

10. In view of the above mentioned facto-legal situation the order passed by the assessing authority is time barred hence beyond scope of his jurisdiction to proceed with, therefore, the appellate order is confirmed and present appeal is disallowed.

11. Order pronounced.



(Omkar Singh Ashiya)
Member



(K.L. Jain)
Member