

RAJASTHAN TAX BOARD, AJMER

Appeal No: 597/2013/Jaipur

Appeal No: 598/2013/Jaipur

The Commercial Taxes officer
Anti Evasion, Rajasthan II , Jaipur

.....the Appellant

Versus

M/s. Precision Operation Systems (India) Pvt. Limited,
Plot no. A-465, Road No. 28,
Wagle Industrial Area, Thane, (Maharashtra)

.....the Respondent

DB

Shri V. Srinivas, Chairperson

Shri Madan Lal, Member

Present:

Sh. D.P. Ojha,
Depty Govt. Advocate (DGA)

.....On behalf of the Appellant

Non Appeared

.....On behalf of the Respondent

Decision Dated : 14/07/2017

JUDGEMENT

1. These appeals have been filed by the appellant Revenue under section 82 of the Rajasthan Value Added Act 2003 (in short 'the Act'), against the order dated 19.09.2012 passed by the Deputy Commissioner(Appeals)I, Commercial Tax, Jaipur (in short the Appellate Authority), where in the orders of the Assessing Officer CTO Anti Evasion Rajasthan II, Jaipur (in short ' the AA ') dated 11.05.2011 and 17.05.2011 passed under section 26, 55, 56 and 61 of the Act, have been set aside by the said Appellate Authority and remanded back to the AA to pass fresh order on the basis of certain directions / observations made in the impugned order.

2. At the outset, In brevity, the facts of the case which paved way for these appeals, are mentioned here under:

(i) The AA has created a demand of Rs. 30,47,345/- and Rs. 1,000/- against the Respondent for the Assessment Year 2008-09 disallowing the sale in the course of Import within the meaning of section 5(2) of the CST Act, 1956 ; treating it sale within the State of Rajasthan.

(ii) Being aggrieved with the order of AA above, the Respondent disputed the legality as well facts of the case before the Appellate Authority. After hearing both the parties, the Appellate Authority set aside the order and remanded the case vide order dated 19.09.2012 to the AA for fresh assessment.

(iii) Being not satisfied with the order of the Appellant Authority, the Appellant preferred above appeals before the Rajasthan Tax Board, against the impugned order.

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3. Heard contentions of the DGA for the appellant Revenue, as Respondent did not appeared inspite of information of hearing of the case.
4. The appellant, Revenue through the DGA contended that the Appellate Authority wrongly deleted the Tax, Interest and Penalty which was rightly imposed upon the Respondent as he concealed the tax liability, on the sale made in the State of Rajasthan but showing the transactions in the course of import within the meaning of section 5(2) of CST Act, 1956. It is found on enquiry that Safety instruments have been supplied by the Respondent to the Police Department of the State of Rajasthan, as per conditions of the tender to supply the goods in the State of Rajasthan. It is true that goods were imported by the Respondent from Canada, outside the India but orders were not given directly to the foreign sellers by the Police Department. Appropriation of the goods was made in the State of Rajasthan hence goods so brought and supplied to the Police Department is an event of sale within the State of Rajasthan hence taxable accordingly, therefore AA has rightly imposed Tax, Interest and Penalty as transactions of the goods shown in returns without tax in the course of import within the meaning of section 5(2) of CST Act, 1956. Further in his arguments he contended as to allegedly serious infirmity vitiating the impugned order dated 19.09.2012 by the Appellate Authority. Therefore, he requested to accept the appeal filed by the Revenue.
5. Perused the record as well as contentions advanced by the learned counsels of the Revenue. It would be worthwhile to look in to principles laid down by the Hon'ble Rajasthan High Court in the matter of M/s Mohit Trading Company Civil STR No. 199/2009 decision dated 13.07.2009 which envisage as under:-

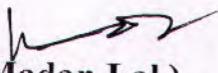
"Admittedly, according to the facts of this case, the order dated 7.7.2003 passed by commercial Taxes officer, Hanumangarh was challenged by the assessee by way of filing an appeal before the Dy. Commissioner (Appeals), Commercial Tax, Bikaner. The said authority passed an order in appeal filed by the assessee on 21.9.2007 Whereby the case was remitted to the assessing authority. The remand order dated 21.9.2007 was further challenged by the Department before the learned Tax Board. However, before adjudication of the appeal by the Tax Board filed by the Department, the assessing authority finally decided the matter vide order dated 30.11.2007 in pursuance of the remand order passed by Dy. Commissioner (Appeals) on 21.9.2007. Meaning thereby the order passed by Commissioner (appeals) was complied with before adjudication of the appeal by Tax Board, therefore, when the appeal came up for hearing before the learned Tax Board, the Tax Board, observed that the appeal has become infructuous because the order dated

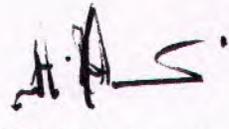
21.9.2007 is not in existence because a fresh order has been passed on 30.11.2007 by the Assistant Commissioner, Commercial Taxes. While observing the said fact, the learned Tax Board rendered the said appeal infructuous vide impugned order dated 10.11.2008. In my opinion, no error has been committed by learned Tax Board while rendering the appeal filed by the Department as infructuous in view of the fact that the Assistant Commissioner, Commercial Taxes has decided the matter finally on remand. Therefore, no interference is required in the impugned order."

6. Since facts of the instant cases are similar to the facts of M/s Mohit Trading company (Supra), hence looking in to the ratio and principle laid down by the Hon'ble Court in the case above, we found no merits in the case. Therefore, appeals submitted by the appellant Revenue are devoid of any merit, consequently, dismissed and disposed of accordingly.

7. In result, both the appeals filed by the appellant Revenue are dismissed.

Order pronounced.


(Madan Lal)
Member


(V. Srinivas)
Chairperson