

Rajasthan Tax Board, Ajmer

Appeal No. 749/2018/Jaipur

M/s Biocon Limited,
521, Acharya Kriplani Marg,
Adarsh Nagar,
Jaipur

Appellant

VERSUS

Assistant Commissioner,
Special Circle-VII,
Jaipur

Respondent

D.B.

SHRI MADAN LAL MALVIYA, MEMBER
SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Ramesh Chand Agrawal,
Advocate
Shri N.K. Baid,
Dy. Govt. Advocate

for Appellant

for Respondent

Dated : 13 /09/2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant") against order of the Appellate Authority-I, Commercial Taxes, Jaipur (hereinafter called the "appellate authority") who vide his appellate order dated 03.04.2018, has confirmed the levy of penalty under section 24(4) of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act") for non-filing of the Annual Return, as imposed by the Assistant Commissioner, Special Circle-VII, Jaipur (hereinafter called the "assessing officer" or "AO") dated 29.09.2016.
2. Brief facts leading to the present appeal is that the assessment of the appellant for the year 2012-13 was finalized under section 24 of the RVAT Act on 24.06.2015 in which the AO imposed a late fee under Rule 19A of the RVAT Rules, 2006 amounting to Rs. 25,000/- for non-submission of the Annual Return VAT-10A. Later, the AO passed another order dated 29.09.2016 wherein a penalty amounting to Rs. 15,97,740/- was imposed under section 24(4) of the Act for non-filing of the Annual Return VAT-10A and the late fee of Rs. 25,000/- as imposed earlier vide order dated 24.06.2015, was adjusted against this demand.





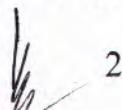
3. Being aggrieved of the assessment order dated 29.06.2016, the appellant preferred appeal before the appellate authority who vide his order dated 03.04.2018 has rejected the appeal and confirmed the levy of penalty under section 24(4) of the Act. Against this order, the appellant is in appeal before the Tax Board under section 83 of the Act.
4. Heard the learned counsel for the appellant as well as the respondent-revenue.
5. A very short question is involved for consideration before the Tax Board and i.e. for the Period 2012-13 for non-submission of the Return(s) or precisely the annual return in form VAT-10A whether penalty under section 24(4) of the Act is leviable or a late fee under rule 19A would be leviable.
6. The issue is squarely covered by judgment of the learned Larger Bench of the Rajasthan Tax Board as given in the case of '**Sunil & Brothers Vs CTO**' in **Appeal No. 1063/2015/Tonk**, dated 07.03.2018. The Larger Bench has elaborately discussed the issues as to when the penalty or the late fee as such, would be leviable for non-filing or late filing of the Return(s). The present matter relates to the year 2012-13 for which the Larger Bench has laid down the law that in case of non-filing of Return(s) between the period 15.04.2011 to 31.07.2014 penalty under section 24(4) cannot be imposed because this sub-section was brought into the statute book only on 31.07.2014, and that only recourse available to the assessing authority is to levy penalty under section 64 of the Act.
7. For ready reference, the findings of the said judgment as given at Page 15, are reproduced hereunder:

"Findings

In light of the legal position as described above the reference to the Larger Bench is answered as follows:

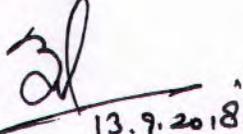
1. *For assessment year 2011-12 onwards the late fee is payable for late filing of returns only and in case the late fee has not been deposited by the dealers the assessing authority while finalizing the assessment, are competent to calculate and levy the late fee. As the 'fee' is not in the category of*



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penalty therefore, no notice is required to be issued prior to levy of late fee.

2. *In case of non-filing of returns between the period 15.04.2011 and 31.07.2014, since no specific provision existed for levy of late fees for non-filers, the late fee is not leviable. As the section 58 was deleted on 15.04.2011 and sub section (4) of section 24 was substituted on 31.07.2014 for levy of penalty for non-filing of returns, therefore, in such cases, the only recourse available to the assessing authorities was to levy penalty u/s 64 of the Act, categorized as "penalty for other violations".*
3. *In case the return has been filed electronically and its acknowledgement is not submitted at all, it shall be deemed to be a case of non-filing of return and in such cases the penalty u/s 64 would be leviable.*
4. *Looking into the provisions of rule 19(2) w.e.f. 14.07.2014, the date of submission of return shall be deemed to be the date on which the signed copy of the acknowledgment is submitted, and the late fee shall be calculated till such date."*
8. In light of the abovementioned authoritative pronouncement of the Larger Bench of the Tax Board, it is held that for the year 2012-13, no penalty under section 24(4) of the Act could have been levied nor any late fee under rule 19A was leviable for non-filing cases. Accordingly, the penalty as imposed by the Assessing Officer is set aside and impugned appellate order is also set aside.
9. Consequently, the matter is remanded back to the AO for levy of penalty under section 64 of the Act in light of the Larger Bench judgment (*supra*), specifically the point no. 2 of the findings as mentioned at Page 15 of the said judgment.
10. Accordingly, the appeal filed by the appellant is accepted and matter is remanded back to the AO for disposal as directed above.
11. Order pronounced.


13.9.2018
(OMKAR SINGH ASHIYA)
Member


(MADAN LAL MALVIYA)
Member