

RAJASTHAN TAX BOARD, AJMER

Appeal No.754/2014/Sriganganagar

M/s H.S. Builders,

Suratgarh, Sri Ganganagar

.....Appellant

Vs

Asstt. Commissioner (Works Tax),

Sri Ganganagar

.....Respondent

SB

Shri Madan Lal, Member

Present :

Shri V.C. Sogani, Advocate

.....For Appellant

Shri Anil Pokharna, DGA

.....For Respondent

JUDGMENT

Dated: 07/09/2015

1. This appeal has been filed under section 83 of the RVAT Act (in short "The Act") against the order dated 02.01.2014 by the Dy. Commissioner(Appeals), Bikaner (in short "Appellate Authority") disallowing the appeal against the order dated 18.10.2012 by the Assistant Commissioner (Works Tax), Sriganganagar (in short "Assessing Officer") passing the order for the year 2009-10 under section 24 of the VAT Act, 2003 and creating a disputed demand of Rs. 19,380/- against which appellant preferred this appeal.
2. In brevity, facts of the case as follow: The learned Assessing Officer issued exemption certificate (EC) on 19.03.2010 under the notification dated 11.08.2006 on the basis of contract awarded to the appellant and Schedule "G " attached thereof at the rate of one and half percent treating civil construction work as per item No. 2 of the notification above, but looking into the facts of the case and nature of work, he rectified the said E.C. on 14.06.2011 stating therein that the works contract awarded to the appellant not pertains to "works contract relating to building" under the notification dated 11.08.2006, therefore, finding it a mistake apparent on the record, Assessing officer rectified the E.C. assuming the works contract pertains to item No. 4 of the notification dated 11.08.2006 and determined exemption fee @ 3% instead of 1.5% by way of rectification order dated 14.06.2011. Against the order dated 14.06.2011, the appellant filed a rectification application under section 33 of the Act but the Assessing Officer rejected the application vide his order dated 18.10.2012.

Cont.....2

3. Aggrieved with this order of rectification passed under section 33 of RVAT Act, the appellant preferred appeal under section 82 of the Act. The Appellate Authority rejected the appeal by the order dated 02.01.2014 filed by the appellant assessee. Aggrieved with the order by the Appellate Authority; he preferred appeal before the Rajasthan Tax Board, Ajmer.
4. Heard counsel of both the parties.
5. Shri V.C. Sogani learned advocate for the appellant contended that the works executed by the appellant was covered under item 2 of the notification dated 11.08.2006 as correctly determined by the AO initially and the difference of E.C. fee charged by the learned Assessing Officer (A.O.) rectifying it's earlier order was not correct and against this, the application filed by the appellant was held to be not maintainable under section 33 of the Act by the A.O., which is apparently illegal and arbitrary, since as per the provisions of Sec.33, a mistake which is apparent from records can be rectified only. In the case of appellant, the learned A.O. while passing order under section 33 has interpreted that the works executed by the appellant was covered under item No. 4 and not under item 2 of the notification dated 11.8.2006 and determined to exemption fee @ 3% which is illegal since earlier, while issuing E.C. and determination of EC fee @ 2 percent, It is nothing but is change of the opinion and is beyond the jurisdiction of sec. 33 as such the order passed by the learned A.O. is illegal. On appeal the learned Appellate Authority held that this was a mistake apparent from record and difference of exemption fee charged by the learned A.O. was correct. The learned advocate requested the orders of the both authorities are apparently illegal and bad in law must be annulled.
6. Shri Sogani further argued that while submitting application for grant of exemption certificate, the appellant has clearly mentioned in the application that the works relates to civil construction, building grounds & flooring work and there was no change in this nature of work when exemption certificate was issued by the learned A.O. treating it to be the works covered under item No. 2 of the notification dated 11.08.2006 but now changed stand of the A.O. is apparently against the provisions of sec.33 of RVAT Act hence order of rectification is illegal and even rejection of application filed by him against the rectification order of AO, is bad in law.
7. He further argued that in case of order passed by the learned Appellate Authority under section 82 of the Act , wherein, the learned Appellate Authority held that the rectification was correctly made by the AO and disallowed the appeal of the Appellant, is apparently illegal. He argued further that as per provisions of section 33, which envisages as under:

"That with a view to rectify any mistake apparent from record, my Officer appointed or any Authority constituted under this Act may rectify suo out or otherwise any order passed by him Explanationa mistake apparent from the record shall include an order which was valid when it was made and subsequently rendered invalid by an amendment of law having retrospective operation or by judgments of S.C., Raj. H.C. and Tax Board".

From the aforesaid reading of provision, it is clear that when assessment finalized was correct but a subsequent decision from any of the courts mentioned above, the rectification could be made but in the case of the appellant the notification dated 11.08.2006 was in existence when regular determination and regular EC was issued, now to hold that the contract is subject to tax @ 3% is apparently illegal and beyond the scope of section 33 as has been held in a number of cases by the Hon'ble Higher Courts wherein it has clearly been held that such types of views are nothing but change of opinion which is not permissible under section 33 to rectify an order. Therefore the order passed by the learned Appellate Authority is apparently illegal and bad in law. He placed reliance on Ms Makkad plastic agency (2011) 29 TUD 203, CTO vs Ms Pradeep Service Centre 36 TUD 233, and CTO vs Ms Pahadpur Cooling Towers Ltd 34 TUD 69 where in it was decided that rectification can be made in respect of mistake on face of record.

8. On the other hand, the learned DGA vehemently opposed the arguments of the learned advocate of appellant specially he mentioned that when incorrect rate of tax mentioned in the exemption certificate and exemption fee is wrongly charged, can be rectified under section 33 of the Act being mistake apparent on the face of record. He stated that the order of the Hon'ble Rajasthan High Court passed in the matter of M/s Ramesh Kumar Bansal, contractor, Sri Ganganagar vs Commercial Taxes Officer (Works Tax), Sri Ganganagar SBC STR No. 107/2010 dated 13.12.21011 is applicable in matter squarely.
9. Perused record as well as rival contentions and rulings advanced by the learned counsels for both the parties
10. It would be pertinent to see works contract awarded to the appetllant,description there of is as under :

S.No.	Description of Works	Grand Total (inclusive of all taxes)
A.	A). Construction of Basket Ball court with Flood lights.	4,57,000/-
B.	Construction of Volley Ball court with Flood lights.	2,30,000/-
C.	Construction of Badminton court with Flood lights.	2,90,000/-

D.	Construction of Concrete Cricket Pitch (Full length).	70,000/-
E.	Construction of Concrete Cricket Pitch (Half length) with fixed practice net with metal frame post of height 12 ft.	70,000/-
F.	Asbestos/Acrylic roofing & flood lighting of existing Badminton court. Rs.	39,960/-
N.	N n. N.	Rs 12,92,040/-

(Rs. Twelve Lakhs Ninety Two Thousand Forty only)

11. Notification issued by the State Government on 11.08.2006 wherein it is envisaged as under:-

List.

S.No.	Item No.	Description of Works Contract Rate of exemption fee % of the total value of the contract
1.	-----	
1.	-----	
2.	Works contracts relating to buildings, roads, bridges, dams, canals, sewerages system.	1.50%
3.	Works contracts relating to installation of plants and machinery including PSPO, water treatment plant, laying of pipe line with material.	2.25%
4.	Any other kind of works contract not covered by 3"item numbers 1,2 and 3".	3%

This notification shall be deemed to have come into force w.e.f. April 1,2006.

12. It would be worthwhile to look into the findings of judgment cited by the learned DAG The relevant portion of the judgment of the Hon'ble High Court in the S.B. V.A.T. Revision Petition No. 107/2010 is extracted below:

11."It has to be noted that exemption certificate issued under the Notification dated 11/8/2006 is actually issued to do away with the procedure of assessment and to save the assessee from the hassles of levy of tax on each and every transaction of sale and purchase during the course of execution of a works contract. Therefore, the Assessing Authority is called upon and bound to only look at the nature of contract prima facie and charge the requisite exemption fees and issue such exemption certificate on the application of the contractor himself. Therefore, this Court is not inclined to accept this contention of the learned counsel for the assessee that such a bifurcation of a composite contract can be permitted and done to charge lesser rate of exemption fees. Since the nature of contract in the present case of construction of overhead water tank and connecting the same to the existing water distribution system

Cont.....5

by laying down the pipe lines with necessary civil works, cannot apparently fall in any one or two of the specific items of the List of Notification dated 11/8/2206, namely item No.2 works contract relating to building, roads, bridges, dams, canals, sewerage system providing 1.50% of exemption fee or item No.3 of works contract relating to installation of plants and machinery including PSPO, water treatment plant, laying of pipe line with material providing for 2.25% of exempt fee, therefore, in the absence of any such bifurcation permitted in law, the Assessing Authority was justified in resorting to residuary clause (4), which provides that any other kind of works contract not covered by item nos. 1,2 & 3' and would attract exemption fee of 3% of the total value of the contract.

13. In para 13 of the same order hon'ble Court ruled:

"13. In view of the above, this Court is of the view that the impugned order of the learned Tax Board upholding the rectification proceedings at the hands of Assessing Authority cannot be faulted and same does not require interference by this Court in the present revision petition."

14. In compliance of ratio of Judgment mentioned in Para 12 and 13 of the Hon'ble Rajasthan High Court, in the matter of Ms Ramesh Kumar Bansal Contractor, incorrect application of rate of tax/fee in any order passed under the Act, can be rectified being a mistake apparent on the face of record. The ruling cited by the learned counsel for the appellant are not helpful to him in the wake of ratio set by the Hon'ble Court. Therefore issue of correct application of rate of tax/fee in the order passed under the Act is well within the ambit of Section 33 of the Act.

15. In result, appeal filed by the appellant is dismissed.
Order pronounced


7.9.2015
(MADAN LAL)
MEMBER