

राजस्थान कर बोर्ड, अजमेर।

अपील संख्या 850/2015.....जिला Jaipur

उत्तवान- M/s Ganpati Plast Fab Ltd., Jaipur Vs. A.C. Special Circle-V, Jaipur

तारीख हुक्म	हुक्म या कार्यवाही मय इनीशियल जज	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
23/07/2015	<p style="text-align: center;">S.B. Shri Madan Lal, Member</p> <p>This appeal has been filed by the appellant under section 83 of RVAT Act 2003 (for short "The Act") against the order dated 21.05.2015 passed by the Appellate Authority under section 38(4) of the Act wherein the Appellate Authority rejected the application of stay for demand of Rs. 31802/-. The appellant preferred appeal against the order of the Appellate Authority.</p> <p>Shri G.N. Sharma & Shri V.K. Pareek counsels for the Appellant Assessee and Shri D.P. Ojha for revenue appeared.</p> <p>Shri G.N. Sharma contended that the Respondent Assessing Authority created illegal demand of Rs. 31802/-⁶³⁵⁹²⁻⁰⁰ vide his order dated 02.03.2015 passed under section 26,55, & 58 of RVAT ACT 2003 read with Rule 19 of RVAT Rules 2005 which is arbitrary and unjustified. They have preferred appeal before the Appellate Authority and requested for stay of the demand but the Appellate authority -I, Jaipur has only given partial stay of appeal Rs. 31802/- for rest he has not given reasonable grounds. Now they preferred appeal before Rajasthan Tax Board against the order of partial stay of demand by the Appellate Authority and requested for stay of the demand remained balance outstanding.</p> <p>On the other hand Shri D.P. Ojha strongly agitated that the demand raised against the Respondent dealer is as per provisions of Rajasthan Sales Tax Deferment Scheme 1998 read with notification No. F.12 (16) FD/Tax/2005-171 dated 31.03.2006 for the period from 01.04.2006 to 31.03.2011. He contended that deferment should have sanction 50% of payable tax, only after deduction Input Tax Credit from Output Tax. He has cited decision given by Hon'ble Rajasthan High Court in case of M/S R.S.W.M. Vs State of Rajasthan</p>	

and M/s Uma Polymers Ltd. Vs State of Rajasthan in support of his contention as matter has already settled in this issue.

Learned counsels for the Appellant Assessee vehemently opposed the arguments advanced by the learned DGA and submitted rulings in the matter of M/s Hans Steel Rolling Mill Vs Commissionr of Central Excise, Chandigarh in the matter of 2715/2003, 2017 & 3988/2003 and M/s Sonex Auto Industries Pvt. Ltd. Vs State of Haryana and Others (2014) 74 VST 518 (P & H). They have contended that the Apex Court has ruled :

"13. The judgements of this court in the cases of Commissioner of C. EX. & Customs V.Venus Castings (P) Ltd. as reported in 2000 (117) ELT 273 (SC) and, Union of India Vs Supreme Steels and General Mills as reported in 2001 (133) ELT 513 (SC), has clearly laid down the principle that the, compound levy scheme is a separate scheme altogether and an assessee opting for the scheme is bound by the terms of that particular scheme. It is settled matter now that Section 11A of the Act has no application for recovery under different scheme".

"15. We are in agreement with the finding and decision arrived at by the Tribunal that the importing of elements of one scheme of tax administration would be wholly inappropriate as it would disturb the smooth functioning of that unique scheme. The time limit prescribed for one scheme could be completely unwarranted for another scheme and time limit prescribed under Section 11A of the Act is no exception"

and Hon'ble Punjab & Haryana High Court has also ruled similar footings in Para 37 of the judgement as under :

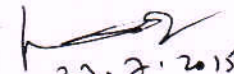
"On plain interpretation of the provisions of the statute and the rules framed thereunder and also on the basis of clarification dated July 12, 2004 issued under section 56(3) of the HVAT Act which is binding on the authorities for the administration of

tax, the State cannot deny the benefit of input-tax credit to the dealer for determining the tax payable by it. Thus, viewed from any angle, the dealer is entitled to the benefit of input-tax credit while calculating the 50 per cent deferred tax upfront to be paid by it."

We have heard rival contentions counsel for both sides of the counsels and citations cited by the learned counsels for appellant assessee.

The rulings cited by the counsels of the Appellant Assessee is related with 'Income Tax Act which is not applicable here as specific provisions of the scheme is under consideration. Other ruling of Hon'ble High Court of Punjab and Haryana is also not applicable on specific provisions laid down in Haryana Valued Added Tax Act and Haryana General Sales Tax Act in particular, clarification issued under section 56(3) of the HVAT Act 2000 on specific circumstances Input Tax Credit has been allowed to the unit under Deferment scheme but here in the light of Notification 2005 -171 dated 31.03.2006 and ratio of judgement by the Hon'ble High Court of Rajasthan in matter of M/S R.S.W.M. Ltd. and M/s Uma Polymers Ltd., it seems prima facie balance of convenience is in favour of the revenue. The Appellate Authority already granted stay for 50% of the demand. Therefore this bench deem fit to disallow stay for a demand of Rs. 31802/- outstanding. However, the Appellate Authority is directed to decide the appeal pending before him within three months of communication of this order without prejudice of findings hereinabove. The appeal is disposed of accordingly.

Order pronounced.


23.7.2015
(MADAN LAL)
MEMBER