

RAJASTHAN TAX BOARD, AJMER

1.Appeal No. 95/2012/Sriganganagar

2.Appeal No. 96/2012/Sriganganagar

3.Appeal No. 97/2012/Sriganganagar

4.Appeal No. 98/2012/Sriganganagar

M/s Ganesh Pipe Centre

Sriganganagar

..... Appellant

Versus

Commercial Taxes Officer

Antievation, Sriganganagar

..... Respondent

D.B.

Sunil Sharma, Member

Amar Singh, Member

Present :-

Shri V.K.Pareek,

Advocate for the Appellant

Shri N.S. Rathore,

Advocate for the Respondent

Date of Judgement : 07.03.2014

JUDGEMENT

These four appeals have been filed against the orders dated 09.09.2011 of the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner (for short, " the Appellate Authority"), whereby tax, interest and penalty levied on sale of sprayers and parts thereof by the Commercial Taxes Officer, Anti Evasion, Sri Ganganagar(for short, " the the Assessing Authority") against the assessee appellant in the assessment orders dated 31.08.2010 passed under sections 26, 55 and 61(1) of the Rajasthan Value Added Tax Act 2003 (for short, " the Act") was upheld.

The brief facts of the case are that the business premises of the appellant assessee, Ms Ganesh Pipe Centre, Sri Ganganagar, were inspected by the Assistant Commercial Taxes Officer, ward I, Anti Evasion, Sri Ganganagar on 25.03.2010 and after the final investigation of documents was over on 22.06.2010, a case of evasion of tax against the appellant assessee was registered and sent to the competent officer for disposal thereof. The case in question was made out on the premise that the appellant assessee showed in its books of accounts and returns sales of Power Sprayer for year 2006-07 as tax exempt ones which, on the contrary, were taxable @ 4% under entry no.1 of Schedule IV and its parts & accessories taxable @ 12.5 % under schedule V to the Act. The appellant assessee took Power Sprayers to be covered under category of goods declared exempt from tax under sub section (1) of section 8 of the Act of schedule I to the Act. On the other hand the Assessing Authority considering it a deliberate act of tax evasion levied tax @ 4 % on such evaded sales of Power Sprayers along with penalty double of tax under

Sunil

Amar Singh

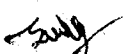
section 61(1) of the Act and simultaneously imposed interest under section 55 of the Act in the aforesaid assessment order passed ex parte for lack of response despite several adjournments having been sought and given to the appellant assessee.

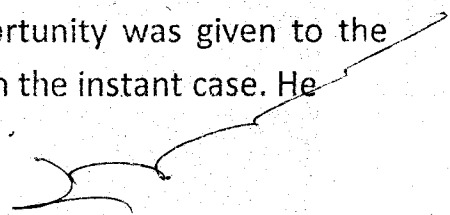
Aggrieved by the order of the Assessing Authority, the appellant assessee preferred appeal before the Appellate Authority who categorising the sales effected during the aforesaid relevant periods of power sprayers, its parts and accessories, held that they were not manually operated agricultural equipments but in actuality those driven by power or tractor and therefore not appearing with items shown at serial no.(14) of entry no.1 (a) under schedule 1 to the Act i.e., sprayer, duster and sprayer cum duster including their parts and accessories shown at entry no.(29) thereof.

Description of items in entry no.1(C) is related to tractor and power driven agricultural implements i.e., 1. thrasher 2. Chaff cutters and their parts (except bolts, nuts and springs) 3.winnowers 4.Disc plough 5.cultivator 6.Harrow 7.Tillers with or without seeding attachments 8.Seed drills 9.Land levellers 10.Trolley of tractor. The Appellate Authority however maintained that nowhere in the above list power driven sprayers were found existing. Moreover, schedule IV to the Act describes entry no.1 prescribing 4% of tax on '**agricultural implements other than mentioned in schedule I to the Act**', without any mention of *parts and accessories thereof*, thus making power sprayers exigible to tax @4% under schedule IV to the Act and their parts at the general rate of 12.5 % under Schedule V to the Act. He rejected plea of the respondent assessee that the anti evasion wing did not have jurisdiction in matters of non deposit of due tax in light of government notifications P3(A)(9) Juris/ Kar/ Ayukta/ 2009/ 100 dated 30.11.2009&P3(A)(9)Juris/Kar/Ayukta/2009/1006 dated 07.08.2009. He on the basis of the decision dated 10.07.2002 given by DB of the Board in case of Honda Ciel Power Product Ltd. and afterwards in another case dated 28.10.2004 considered it appropriate in the circumstances of case to reject the appeal of the appellant.

Aggrieved by the decision of the Appellate Authority, the appellant assessee has come up in appeal before the Board.

Arguing on behalf of the appellant assessee, learned counsel Shri VK Pareek said that the Assessing Authority completely erred in presuming agricultural implements namely power sprayers taxable @4%, which were in fact goods exempt from tax under section 8(1) of the Act and qualified for being considered in the description of agricultural implements manually operated or animal driven or tractor or power driven, spare parts and accessories thereof. He contended that no opportunity was given to the appellant and the assessment order was exparte in the instant case. He





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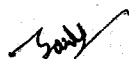
prayed for setting aside tax, interest and penalty. Arguing vociferously that the word "namely" in main heading of agricultural implements embracing the entire expanse of items thereunder than confined to power driven agricultural items only under sub heads (a) and (b) of aforesaid entry no.1 of Schedule 1 to the Act as understood by both the Assessing Authority and Appellate Authority in parochial sense, he averred that sub heading "c" of entry no.1 of course mentioned " power driven agricultural equipments, but it be read under aforesaid main heading which addressed to all sub heads under it ,i.e., (a), (b) and (c). The main heading reads as:"Agricultural implements manually operated or animal driven or tractor or power driven, spare parts and accessories thereof, namely,"

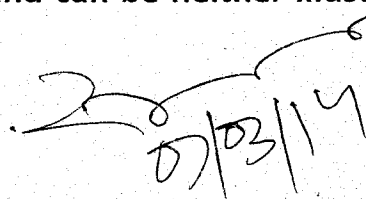
Elaborating upon it, Shri VK Pareek the learned counsel to the appellant averred that if the legislature had the desire to restrict the power driven agricultural equipments to sub heading (c) only, it would have put the aforesaid items under sub head (c) alone. He submitted that the Hon'ble Supreme Court in case of Mangalore Chemicals and Fertilisers Ltd v Deputy Commissioner, CT, reported in (1991)83 STC 234 held that " if the words are plain and clear and directly convey the meaning, there is no need for any interpretation".

Appearing on behalf of the respondent department, the learned counsel Shri Jameel Jai argued that the assessee showed in the returns sale of power sprayers and spare parts & accessories thereof for the aforesaid relevant period as sales exempt from tax which on the contrary were taxable @ 4% under entry no.1 of Schedule IV in case of Power Sprayers and for spare parts & accessories thereof @ 12.5% under schedule V to the Act. He wilfully evaded the impugned taxable turnover to indulge in tax evasion. He was given adequate opportunity of being heard which he did not avail for reasons best known to him. Moreover, his filing appeal before the Appellate Authority and making averments to defend his case left no room for doubt that he was quite aware of implications of his case and had intentions to evade due tax.

Sri Jameel Jai, the learned government advocate, further contended that the Hon'ble Madras High Court elucidating the word "namely" in case of Tamil Nadu Vs KC Raja Nadar reported in 1981 47(STC) 337 invested it with a restrictive meaning. The relevant excerpt from it is as under:

"Consequently there can be no doubt about the meaning of the word "namely", that is, it is restrictive in the sense that the general expression which precedes the word "namely" is confined to the itemized expressions that follow the word "namely". Consequently the meaning of the word "namely" can only be restrictive and can be neither illustrative nor expansive."




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As such the power sprayers were taxable @ 4% according to serial no.1 of Schedule IV to the Act and spare parts and accessories @ 12.5 % as per Schedule V to the Act, because all agricultural equipments not falling under sr.no.1 (a),(b) and (c) of Schedule 1 to the Act would be covered under entry no.1 of Schedule IV to the Act in accordance with the statutory condition laid down therein which reads " agricultural equipments other than mentioned in Schedule-1 4% ". Since this wording does not talk of the spare parts and accessories of power driven sprayers, these would naturally fall in residuary schedule V to the Act being taxable @ 12.5%.

We have heard the counsels to both the parties to the issue and gone through the record placed before us. The cases cited aforesaid were also gone through with all respect.

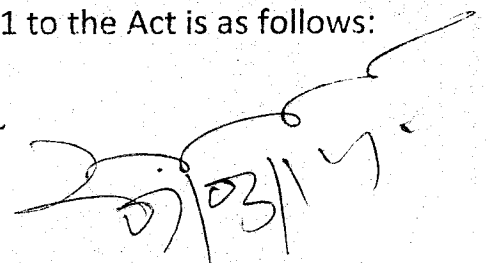
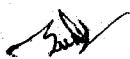
Two issues need be addressed as raised during argument and in grounds of appeal. First, the Assessing Authority arbitrarily made ex parte assessment and second, the Assessing Authority completely erred in presuming agricultural implements namely power sprayers to be taxable @4% and the spare parts and accessories of power driven sprayers taxable @ 12.5 %, which were in fact goods exempt from tax under section 8(1) of the Act.

On first issue, the Assessing Authority has written detailed reasons to proceed for impugned ex parte assessment in the case, It would be imperative to have a look at the relevant passage of the aforesaid assessment order given hereunder:

" दिनांक 09.07.2010 को श्री नवल खेमका, अधिकृत प्रतिनिधि के निवेदन पर तारीख पेशी दिनांक 15.07.10 नियत की गयी। दिनांक 15.07.10 को पुनः प्रास्थगन हेतु प्रार्थना पत्र पर विधि सम्मत कार्यवाही करते हुए दिनांक 30.07.2010 व पुनः पेशी दिनांक 02.08.2010 नियत की गयी। नियत तिथि 02.08.2010 को श्री नवल खेमका, अधिकृत प्रतिनिधि के निवेदन पर अंतिम तारीख पेशी 20.08.10 को अंतिम अवसर प्रदान करते हुए दी गयी। दिनांक 20.08.10 को व्यवसायी की ओर से न तो कोई उपस्थित हुआ तथा न ही कोई प्रास्थगन प्रार्थना पत्र प्राप्त हुआ। फलतः पत्रावली रेकार्ड का अवलोकन किया गया एवं पाया गया कि व्यवसायी के असहयोग पूर्ण रवैये के कारण एकतरफा कार्यवाही के अलावा कोई विकल्प शेष नहीं रहता है। फलतः कर निर्धारण आदेश के निष्पादन की कार्यवाही को एकतरफा कार्यवाही के अन्तर्गत लेते हुए, पत्रावली को आदेश हेतु सुरक्षित रखा गया। पत्रावली निर्णय हेतु आज प्रस्तुत हुई ।"

The above account of the foregoing para reveals that appellant assessee has no rational ground to contest that the aforesaid assessment was made arbitrarily. There seems to be present no potent cause for invalidating assessment proceedings made ex parte.

Second, issue is related to liability to tax on power sprayers. The description of agricultural equipments in Schedule 1 to the Act is as follows:



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S.No.	Description of Goods	Conditions if any
1.	<p>Agricultural implements manually operated or animal driven or tractor or power driven, spare parts and accessories thereof, 'Namely'-</p> <p>(a) Ordinary Agricultural implements :</p> <p>1. Hand Hoe (Khurpa or Khurpi); 2. Spade; 3. Gandasa; 4. Pick i.e. khudali; 5. Axe; 6. Khanta; 7. Belcha; 8. Patela; 9. Hand-driven chaff cutters and their parts (except bolts, nuts and springs); 10. Sickle; 11. Beguri; 12. Hand wheel doe; 13. Horticultural tools like budding, grafting knife, secateur, pruning shear or hook, hedge shear; sprinkler, rake; 14. Sprayer, duster and sprayer-cum-duster; 15. Soil injector; 16. Jandra; 17. Wheel barrow; 18. Winnowing fan or winnower; 19. Dibbler; 20. Puddler, 21. Fertilizer seed broadcaster; 22. Maize Sheeller; 23. Groundnut decorticator; 24. Manure or seed screen; 25. Flame gun; 26. Seed grader; 27. Tasla (includes Ghamela, Tagari and Parat, made of ferrous metal; "27A. Crowbar (Sabbala)" 28. Tangli; 29. Sprayer including their parts and accessories; 30. Parts and accessories specific to the sprinkler system and drip irrigation system including pipes which are used exclusively for sprinkler and drip system (but not used for ordinary works as carriage pipes.)</p>	
	<p>(b) Animal driven agricultural implements:</p> <p>1. Plough including disc-plough; 2. Teeth of the plough; 3. Harrow; 4. Cultivator; 5. Seed drill, fertilizer drill, seed-cum-fertilizer drill; 6. Tiller with or without seeding attachment; 7. Landleveller or scoop; 8. Chaff cutters and their parts (except bolts, nuts and springs); 9. Axles and rims of animal-driven vehicles; 10. Persian wheel and spare parts; 11. Roller; 12. Yoke; 13. Planter; 14. Plank or float; 15. Ridger; 16. Ditcher; 17. Bund former; 18. Thrasher or palla; 19. Transplanter; 20. Reaper; 21. Mower; 22. Sugar can crusher; 23. Cane juice boiling pan and grating; 24. Cart.</p>	
	<p>(c) Tractor or Power Driven Agricultural Implements :</p> <p>1. Thrasher. 2. Chaff cutters and their parts (except bolts, nuts and springs). 3. Winnower, 4. Disc plough. 5. Cultivator. 6. Harrow. 7. Tillers with or without seeding attachments. 8. Seed drills. 9. Land levelers. 10. Trolley of tractor.</p>	

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To analyse the issue of exemption from tax on power driven sprayers on the basis of above description, It would be appropriate to see it in the light of the judgment passed by the double bench of the Board in a similarly situated case of Ms Jagdamba Machinery Store, Sriganganagar Vs Commercial Taxes Officer, Anti evasion, Sri Ganganagar holding whereby "Power Sprayers" " classifiable under entry no.1 of Schedule IV and exigible to tax @4% whereas their parts & accessories classifiable under Schedule V to the Act and thus attracting tax @ 12.5%, because they did not fall under entry nos.1(a) 14 and 1(a)29 of Schedule 1 to the Act.

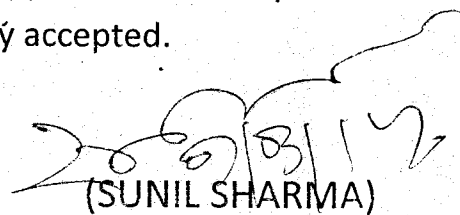
As regards penalty imposed under section 61 of the Act on the appellant assessee for alleged evasion of tax on the aforesaid items ,i.e., power driven sprayers and spares & accessories thereof, it could not be said to have been levied in sprit of law, because all the related transactions were well entered in the books of accounts of the assessee appellant and the impugned turnover was not concealed from books of accounts and returns. Therefore, the penalty imposed by the Assessing Authority and upheld by the Appellate Authority is set aside in the light of the Hon'ble Supreme Court's judgment in case of Sri Krishna Electricals Vs Tamil Nadu State & Others (2009) 11 VAT Reporter 159 and the Hon'ble Rajasthan High Court's decision in case of CTO, Anti Evasion, Sriganganagar Vs Durgeswari Food Limited, Sri Ganganagar (2012) 17 JK Jain's VAT Rreporter 39 .

In the light of aforesaid analysis of factual and legal matrix of the case, the impugned appeal order of the appellate authority and assessment order passed by the Assessing Authority are confirmed to the extent of levy of tax and imposition of interest, whereas penalty levied under section 61 of the Act in the assessment order and upheld by the Appellate Authority is set aside. In the result, the impugned appeal is partially accepted.

order pronounced


(AMAR SINGH)

MEMBER


(SUNIL SHARMA)

MEMBER