

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

ORDER

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S.B. Sales Tax Revision No. 409/1999

C.T.O., Special Circle, Ajmer

Versus

Shree Cement Ltd., Beawar

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S.B. Sales Tax Revision No. 477/1999

C.T.O., Special Circle, Ajmer

Versus

Shree Cement Ltd., Beawar

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Date of order

::

July 31, 2007

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Vinay Goyal for the petitioner-Revenue

Mr. Vivek Singhal for the respondent-assessee

BY THE COURT:

1. Heard learned counsels.
2. These two revision petitions arise out of the order of the Tax Board dated 26.08.1997 passed in Appeals No. 543/94/Ajmer and 544/94/Ajmer deciding the aforesaid two appeals of the assessee in favour of the assessee and holding that there was no misuse of declaration in Form 'C' on purchase of A.C. sheets at concessional rate during Assessment Year 1983-84 and 1984-85 and consequently, the penalty of Rs. 5743/- and Rs. 8905/- imposed by the learned CTO under Section 10-A of the CST Act, 1956 vide order dated 15.12.1990 was illegal.
3. In fact, for these two assessment years, the learned CTO first imposed this penalty vide order dated 05.01.1988, which was set aside by the first appellate authority, namely, Deputy Commissioner (Appeals) vide his order dated 28.11.1988. The learned DC (Appeals) remanded the case back to the learned CTO by the said order dated 28.11.1988. The learned CTO reimposed the said penalty vide his order dated 15.12.1990. In the meanwhile, however, against the remand order dated

28.11.1988, the matter was taken to the Sales Tax Tribunal, which by its order dated 03.09.1993 set aside the remand order of the learned DC (Appeals) dated 28.11.1988. Against the order of the learned CTO dated 15.12.1990 reimposing the said penalty, the first appeal of the assessee was decided by the learned Deputy Commissioner (Appeals) vide order dated 24.05.1994, who however held that the appeals against the order dated 15.12.1990 passed by the learned CTO had become infructuous in view of the learned Sales Tax Tribunal having set aside the earlier remand order dated 28.11.1988 and the learned DC (Appeals), therefore, observed that the impugned penalty order dated 15.12.1990 also was impliedly set aside. However, the assessee filed these two appeals before the Tax Board, which decided the appeals on merits by the impugned order dated 26.08.1997 setting aside the penalty under Section 10-A of the CST Act.

4. The Revenue is in revision petitions before this court under Section 86 of the RST Act, 1994 on the question of law as to whether penalty under Section 10-A of the Act could be

imposed for the alleged misuse of declaration in Form 'C' on purchase of A.C. sheets used in plant and machinery of the assessee, who manufactures cement.

5. The contention of the learned counsel for the assessee is that A.C. sheets were included in the registration certificate of the respondent-assessee and therefore, there was no question of imposition of penalty under Section 10-A of the Act holding it to be a misuse of declaration in Form 'C'. Learned counsel for the Revenue opposes this submission.

6. This court had occasion to deal with a controversy of similar nature between the same parties relating to purchase of iron and steel against declaration in Form 'C' and this court has held by a detailed judgment referring to various case laws cited at bar that it was not a case for imposition of penalty under Section 10-A of the Act and the said judgment has been delivered by this court only yesterday on 30.07.2007.

7. Consequently, for the reasoning given in the said

judgment, the present revision petitions of the Revenue against the impugned order of the Tax Board dated 26.08.1997 are also liable to be dismissed and the same are accordingly dismissed with no order as to costs.

8. It is held that the assessee is not liable to pay any penalty under Section 10-A of the Act for the alleged misuse of declaration in Form 'C' for purchase of A.C. sheets against declaration Form 'C'.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 60 & 61