

**SUPREME COURT OF INDIA**

Assistant Commercial Tax Officer

Vs.

Rijhumal Jeevandas

C.A.No. ....of 2010

(S.H. Kapadia and Swatanter Kumar JJ.)

15.04.2010

**JUDGEMENT**

**Swatanter Kumar, J.**

1. Leave granted.

2. With the consent of counsel appearing for the parties, the matters are heard for final disposal. By this judgment we will dispose of all the aforementioned appeals as common question of law on somewhat similar facts arises for consideration of this Court in all these appeals. However, for the purpose of brevity and to avoid repetition of facts, we would be referring to the facts of SLP (C) No. 11103 of 2009.

3. All these aforementioned appeals, though refer to different respondents, all being timber merchants but the principal question raised in all these appeals is identical, whether the 'ballies' can fall under the expression 'timber' so as to justify levying of higher sales tax.

4. M/s. Rijhumal Jeevandas (hereinafter referred to as 'the assessee') is a concern, trading in 'timber' and its allied products. The Assessing Officer vide his Order dated 17th November, 2000, passed an order of assessment against the assessee wherein he levied tax at the rate of 8% i.e. Rs. 5,75,580/- on the 'ballies' which, according to the Department, comes within the category of 'timber' and thus, the tax ought to have been levied at the rate of 12%. On this premise, a notice was issued by the authority for amending the assessing order under Section 37 of the Rajasthan Sales Tax Act, 1994 (for short 'the Act'). Despite service of notice, none had appeared on behalf of the assessee and the differential tax at the rate of 4% was levied totaling to Rs. 23,023/-. Further, the authorities imposed surcharge of Rs. 5 2,763/- and interest of Rs. 26,302/-, and raised a total further demand of Rs. 52,088/-.

5. Against the aforesaid order of assessment, the assessee preferred an appeal before the Deputy Commissioner (Appeals), Commercial Tax Department, Kota. The main argument raised was that the order was beyond the purview and scope of Section 37 of the Act. The

`ballies' could not be treated to be covered under the head `timber' and, as such, the entire demand was vitiated in law.

6. The aforesaid appeal was allowed. The appellate authority found that, the `ballies' comes under the category of `goods' and not under the category of `building goods'. Thus, the differential tax levied by the Tax Assessment Officer, assuming `ballies' to be `timber' was not justified. Consequently, the entire demand itself was set aside.

7. The order of the appellate authority dated 18th October, 2006 was challenged by the Assistant Commercial Taxes Officer, Ward -III, Circle-B, Kota, before Rajasthan Tax Board, Ajmer which vide its judgment dated 11th June, 2007 found that the `ballies' are not `timber' and upheld the view taken by the First Appellate Authority and dismissed the appeals preferred by the Department.

8. Aggrieved by the Order of the Rajasthan Tax Board, Ajmer the Department preferred a revision under Section 86 of the Act and besides referring to the facts, the following questions of law were framed for consideration of the High Court:

“(i) Whether in the facts and circumstances of the matter the order passed by the assessing authority was in any manner inappropriate for the purpose of interference by the appellate authorities ? (ii) Whether the Appellate Authorities were justified in interfering with the orders passed by the assessing authority which related to appreciation of entire record and facts ? (iii) Whether the appellate authorities justifies in drawing the wrong conclusion while misinterpreting the provisions of the Section 37 of the Act of 1994 which relates to rectification of an order ? (iv) Whether the goods/good used and dealt with by the respondent assesses could be classified as not timber so as to enable the respondent assesses to pay tax @ 8% while bally comes in the category of timber wood and upon which the tax is payable @ 12%?”

9. This revision petition came to be dismissed by the High Court vide its Order dated 7th July, 2008. The said Order reads as under:

“After having carefully gone through material on record, since after due consideration proper discretion has already been used by the Deputy Commissioner (Appeals) as also the Rajasthan Tax Board, in the facts and circumstances, no further interference is called for by this Court.

The revision petition is dismissed accordingly as having no merits.”

10. The present appeals had been preferred by the Department against the order dated 7th July, 2008 passed by the High Court. The primary challenge, to the legality and correctness of the order, is that there is no discussion either on the facts or on the questions of law raised in the revision petition before the High Court and in the argument addressed during the time of hearing of the revision petition.

11. With some regret, we are constrained to notice that the cryptic orders like the above, have not only been passed in the present appeals, but identical orders had even been passed by the High 8 Court in large number of cases from which the appeals have been preferred before this Court. Identical orders, though in different revision petitions dealing with different facts, parties and questions of law, running into 4 lines, like the present one, have been passed, even without variation of a coma or a full stop. It also needs to be noticed that the grounds raised by the Department before us cannot be said to be frivolous or untenable which required discussion by the High Court. The orders, besides being cryptic, suffer from basic infirmity of non application of mind and non-speaking orders in law. This ground need not detain us any further as even in other cases where identical orders were passed, this Court had the occasion to consider the same grounds at some length. Reference, in this regard, can be made to the judgment of the date, the Bench, in the case of Assistant Commissioner v. M/s Shukla & Brothers (SLP (C) No. 16466 of 2009) decided on the same day, where after discussing the law at some length, the order passed by the High Court was set aside and the case was remanded to the High Court for hearing the case de novo and passing of an order in accordance with law afresh.

12. In view of the ratio of the case of M/s. Shukla & Brothers (supra), which is squarely applicable on the fact and law to the present case, we are constrained to set aside the order passed by the High Court and remand the matter to the High Court for hearing the case de novo. We are compelled to make this direction as it was expected of the High Court to consider the question of law raised before it and express its own opinion/reasons.

13. For the reasons stated above and the reasons recorded in the case of M/s. Shukla & Brothers (supra), we hereby set aside the impugned orders of the High Court and remand the matters to the High Court for hearing the same de novo and pass orders in accordance with law. However, in the facts and circumstances of the case, there shall be no order as to costs.

To that extent the appeals are allowed.