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

1. **S.B. Sales Tax Revision Petition No.107/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S MAHALAXMI OIL INDUSTRIES, G-45, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

2. **S.B. Sales Tax Revision Petition No.108/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S MAHALAXMI OIL INDUSTRIES, G-45, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

3. **S.B. Sales Tax Revision Petition No.109/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S RAJASTHAN OIL MILLS, G-1/70, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

4. **S.B. Sales Tax Revision Petition No.110/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S MAHALAXMI OIL INDUSTRIES, G-45, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

5. **S.B. Sales Tax Revision Petition No.112/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S RAJASTHAN OIL MILLS, G-1/70, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

6. **S.B. Sales Tax Revision Petition No.113/2007**

ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CIRCLE NAGAUR.
v.
M/S RAJASTHAN OIL MILLS, G-1/70, INDUSTRIAL AREA, MERTA CITY, DISTRICT NAGAUR.

Reserved on : 9th September 2016
Pronounced on: 4th November 2016

HON'BLE MR. JUSTICE JAINENDRA KUMAR RANKA

Ms. Tanvi Sahai for
Mr. R.B. Mathur counsel for petitioner
Mr. Devendra Kumar counsel for respondents

ORDER

1. All these instant petitions are directed against order dt 14.9.2005 passed by the Rajasthan Tax Board, Ajmer, and since the issue raised being identical in all these petitions, with the consent of the learned counsel for the parties, all the petitions are being disposed of by this common order. Assessment years involved are 1995-96 to 1999-2000.

2. The respondents are manufacturers of Oil and the assessee contended that they were entitled to the benefit of Sales Tax Incentive Scheme 1989, however, the Assessing Officer taking into consideration the judgment of apex court in the case of **State of Rajasthan & Another v. Gopal Oil Mills & Another** 1999 (4) SCC 368, was of the view that as observed by the apex court, the assessees were not entitled to any benefit after 4.4.1994 and were only entitled to such benefits as per incentive scheme upto 3.4.1994 of the goods and accordingly show cause notice was issued. An explanation was filed by the assessee, however, the AO was not satisfied and held that the judgment of apex court is squarely applicable and thus levied tax and

interest.

3. Appeals were preferred before the Dy. Commissioner (Appeals), who went into the issue and allowed the appeals of the assessee. On a further appeal by the Revenue before the Tax Board resulted into dismissal of the appeals.

4. Learned counsel for the petitioner vehemently contended that identical issue came up before this court in the case of **Assistant Commissioner, Commercial Taxes v. M/s. R.C. Oil Industries** [STR No.118/2003] and **Assistant Commissioner, Commercial Taxes v. M/s. Bajrang Bali Oil Industries** [STR No.105/2007], and this court vide judgment dt 1.8.2013 quashed and set aside the orders passed by the Tax Board and upheld the stand of the Revenue taking into consideration the judgments of apex court in **State of Rajasthan & Another v. M/s. Mahaveer Oil Industries & Others** (1999) 4 SCC 357, and Gopal Oil Mills (supra). She contended that the instant petitions also arises out of the same order of the Tax Board, and once this court has already taken a view on the same impugned order of Tax Board, the judgment on the self same question deserves to be followed. She further contended that question of exemption does not arise when the apex court has given a cut off date of 4.4.1994 and both the Appellate Authorities were unjustified in distinguishing the judgment of apex court which is law of the land and when the AO had relied upon the said judgment.

5. Per contra, learned counsel for the assessee raised preliminary objections, namely :

(1) That the revision petitions are not maintainable before Jaipur Bench of this court as the assessee is situate at Merta City, District Nagaur, and once the assessee is assessed and situated in District Nagaur, the jurisdiction lies at Jodhpur.

(2) It has also been contended that the Tax Board allowed similar petitions in the case of **CTO, Beawar v. Vimal Oil Industries, Kekri** 4 Sales Tax Today 2631, **Gopal Oil Mill v. Assistant Commissioner, Bharatpur** 35 RTJS 263 and **M/s. Singhania Oil Mill, Khairthal v. Assistant Commissioner, Special Circle, Alwar** [Appeal No.557/2002/Alwar, and the said orders of the Tax Board allowing the claim of assessee attained finality and were not challenged before this court. He thus contended that once the view attained finality on identical case, the same cannot be re-agitated. He in this regard regard relied upon **Ambica Industries v. CCE** (2009) 20 VST 1 SC, **Mohd. Harun & Anr. v. Nissar Ahmed & Ors.** (2008) 5 WLC 8 (Raj-DB), **Seth Banarsi Dass Gupta v. CIT** (1978) 113 ITR 817 Del., **Birla Cotton Spinning & Weaving Mills Ltd. v. CIT** (1980) 123 ITR 354 Del. and **Suresh Desai & Associates v. CIT** (1998) 230 ITR 912 Del.

5.1 Learned counsel also contended that both the Appellate Authorities had correctly come to the conclusion that the benefit was available to the assessee and it is a finding of fact reached by both the Appellate Authorities and the same is required to be upheld.

5.2 Learned counsel for the assessee also contended that interest u/s 58 of the RST Act, 1994 is not leviable and relied on **J.K. Synthetics Ltd. v. CTO** (1994) 94 STC 422 (SC).

6. Learned counsel for the Revenue in reply to the contentions of the learned counsel for the respondents contended that the cases decided by this court in M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra), were also of District Nagaur, and when this court has already passed an order, question of transferring the present petitions on the same facts does not arise. She also contended that Dy. Com. (Appeals) and even the office of Tax Board is at Ajmer, and both the Appellate Authorities are situate within the jurisdiction of Jaipur Bench.

6.1 Learned counsel for the Revenue also contended that in the three cases where petitions were not filed before this court, were on account of smallness of tax effect, and question of discrimination does not arise. She also contended that the judgment in M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra), is a binding judgment on this court on the self same question, and to her knowledge the said judgment has attained finality and has not been challenged. She also relied upon **Official Liquidator v. Dayanand & Others** (2008) 10 SCC 1, **C.K. Gangadharan & Another v. CIT, Cochin** (2008) 8 SCC 739, **Kusum Ingots & Alloys**

Ltd. v. Union of India & Another (2004) 6 SCC 254, **State of Maharashtra v. Digambar** (1995) 4 SCC 683, and **Virendra Dangi v. Union of India & Others** 1992 (1) WLC (Raj.) 419.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the impugned order as well as taken into consideration the judgments relied upon by the parties minutely. The petitions were admitted on the following questions of law :-

> “Whether the learned Tax Board and the Deputy Commissioner (Appeals) were justified in insisting upon the amendment of the eligibility certificate and permission of the DLSC for giving effect to the judgment of the Hon'ble Supreme Court in the facts of present case?
>
> Whether the requirement of correction/amendment in the eligibility certificate from the DLSC would not stand waived or dispensed with from the judgment of the Highest Court of the land namely the Hon'ble Supreme Court in the case of State of Rajasthan Vs. M/s Gopal Oil Mill reported in (1999) 4 SCC page 368?
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> Whether once when the Apex Court of the country in the case of State of Rajasthan Vs. M/s Gopal Oil Mill reported in (1999) 4 SCC page 368 has held that no benefit under the incentive scheme of 1989 to oil manufacturing industries was payable under the RST Act after 4.4.1994, would it still require any correction in the eligibility certificate which was nothing but a facit of principle of natural justice and whether the doctrine of useless formality in the facts of the present case would not be attracted in that even if DLSC would have been approached or now approached, it cannot decide contrary to what the Hon'ble Supreme Court had already decided?”

8. Admittedly, the judgment of this court in the case of <u>M/s. R.C. Oil Industries</u> and <u>M/s Bajrang Bali Oil Industries</u> (supra), is on the self same question and admittedly the instant petitions now under

challenge as well as the above two cases, were decided by the Tax Board on the same date on 14.9.2005. While the cases of M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra),were decided on 1.8.2013 but the present cases somehow kept pending before this court.

9. It may be appropriate to first deal with the arguments of the learned counsel for the assessee about jurisdiction. Admittedly, the case of M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra), were also of District Nagaur but came up to be decided by this court at Jaipur Bench, so also the instant cases are of District Nagaur and the petitions have been filed before this court at Jaipur in the year 2007, and it would not be appropriate to transfer such cases after almost nine years of pendency before this court. Be that as it may, the apex court in the case of Kusum Ingots & Alloys Ltd. (supra), took into consideration about the cause of action and it was held that where appellate/revisional order was passed, the petition could have been filed and admittedly in the instant case both the Appellate Authorities are situated in the jurisdiction of Jaipur Bench being at Ajmer. It would be appropriate to quote the relevant paras of the judgment :-

> "25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose

his forum.

26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parishad (1995) 4 SCC 738), that situs of issue of an order or notification by the Government would come within the meaning of expression 'cases arising' in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

(emphasis supplied)

10. Thus, taking into consideration the aforesaid, this court in my opinion has the authority to hear and to dispose of the petitions particularly also because the earlier two petitions in M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra), though of same place, were heard and disposed of by the Jaipur Bench of this court. Furthermore, when the issue is covered and no more res integra by so many judgments of

Apex court and this court, and transferring of the petitions now after nine years, does not arise.

11. The other objections raised by the learned counsel for assessee that in the three other cases on the self same question the Revenue did not assail the order of Tax Board before this court, is no reason to accept the contention of the learned counsel for the assessee for the reason that there may be several factors, namely smallness of tax effect and other issues and this cannot be a reason for such an objection and the apex court judgments in the case of State of Maharashtra v. Digambar and C.K. Gangadharan & Another v. CIT (supra), supports the view that merely because in some cases the Revenue has not preferred appeal, that does not operate as a bar. It would be appropriate to quote the relevant paras from the judgment in C.K. Gangadharan's case :-

> "12. If the assessee takes the stand that the revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides. As a matter of fact, as rightly contended by the learned counsel for the revenue, there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions have been taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of decision is revenue neutral there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.
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> 13. In answering the reference, we hold that merely because in some cases the revenue has not preferred appeal that does not operate as a bar for the revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher Court when divergent views are expressed by the Tribunals or the High Courts."

12. The State of Rajasthan preferred appeals before the apex court in the case of State of Rajasthan v. Gopal Oil Mills (supra), and the apex court vide judgment dt 23.2.1995 held as under :-

> "5. We find that even after the impugned judgment of the High Court was rendered on January 12, 1993, eligibility certificates were issued to certain industrial units and a circular dated January 27, 1994 was also issued by the Director of Industries of the State Government on the same lines under which some benefit has been availed by those industrial units under the State Sales Tax Act. In these circumstances, we consider it appropriate to direct that the unavailed benefit under those eligibility certificates under the State Sales Tax Act would not be available to them but the extent to which the benefit under the State Act has been already availed up to April 4, 1994, the date on which the ex parte order of stay was made by this Court, on the basis of the eligibility certificate so issued, the State Government would not disturb that position by seeking to recover any amount under that head."

13. The apex court, again in the case of State of Rajasthan v. Mahaveer Oil Industries (supra), after a detailed analysis of various judgments, has held as under :-

> "In the premises, the judgment of the High Court, in so far as it sets aside the notification of 7.5.1990 issued under the Rajasthan Sales Tax Act, 1954 is set aside and the notification of 7.5.1990 issued under the Rajasthan Sales Tax Act, 1954 is upheld as valid. The respondents, however, will be entitled to retain the benefits received by them under the incentive scheme framed under the Rajasthan Sales Tax Act upto 4.4.1994. The judgment of the High Court in so far as it quashes the notification of 7.5.1990 issued in respect of the incentive scheme under the Central Sales Tax Act is upheld in the light of the decision of this Court in the case of State of Rajasthan v. Gopal Oil Mills. The appeal is disposed of accordingly. There will, however, be no order as to costs looking to the circumstances of the present case."

14. On perusal of the above it is clear that the apex court finally came to the conclusion that the

benefit is only available upto 4.4.1994 and not later-on, and since in the instant cases, admittedly the assessment years involved are of 1995-96 on-wards, therefore, no benefit was available to the respondent assessees. Once the apex court has held that benefits are available upto 4.4.1994, no other authority could have taken any other view.

15. Now taking into consideration the arguments on merits, in my considered opinion when the self same question has been considered by this court in the case of <u>M/s. R.C. Oil Industries</u> and <u>M/s Bajrang Bali Oil Industries</u> (supra), where this court has extensively considered the judgments of apex court in <u>M/s. Mahaveer Oil Industries</u> and <u>Gopal Oil Mills</u> (supra), and has held that no benefit can be extended to the assessee on or after 4.4.1994, then the same view on the same issue and particularly when arising out of same impugned order, needs to be followed and it would be appropriate to quote the relevant paras of the judgment :-

> "10. It is true that the Division Bench of this Court passed an order on 12/01/1993 in the case of Lokendra Industries (supra) and the Hon'ble Apex Court in the case of Gopal Oil Mill (supra) and Mahaveer Oil Industries (supra) reversed the judgment of this Court in Lokendra Industries (supra). Thus on perusal of the judgments it is crystal clear that the Hon'ble Apex Court approved the notification dt.07/05/1990 issued under the Rajasthan Sales Tax Act, 1954, however, the Hon'ble Apex Court, considered the hardship having been faced by similarly situated traders, because in the case of Gopal Oil Mills (supra), initially operation of the judgment of the Division Bench was stayed and that stay was granted by the Hon'ble Apex Corut on 04/04/1994, by mentioning this fact, came to the conclusion that the respondents (traders) cannot be discriminated against and, therefore, a cut off date was fixed as 04/04/1994 and it was directed that the respondents will be allowed to retain

the benefits, if any, enjoyed at least upto 04/04/1994, just as the other oil industries have been allowed to retain benefits upto 04/04/1994 and it was clarified that the benefit cannot be extended beyond 04/04/1994 or upto the date of judgment rendered by the Hon'ble Apex Court i.e. 20/04/1999. Therefore, by the aforesaid two judgments of the Hon'ble Apex Court, it was directed that the benefits flowing from issuance of certificate or/and incentive scheme was not correct and ultimately the notification of 07/05/1990 was upheld as valid.

11. xxx xxx xxx xxx

12. On perusal of the above, it is apparent that the explanation answers the present controversy which makes it very clear that any mistake apparent from the record by a judgment of the Supreme Court, Rajasthan High Court or the Rajasthan Tax Board, therefore, in my view, in the light of the judgment of the Hon'ble Apex Court, the rectification, insofar as the present facts and circumstances, are concerned, have been correctly made by the Assessing Officer. It is a matter of fact that when benefit has been extended by the Hon'ble Apex Court, considering the hardship faced by the similarly situated traders, upto the period when the operation of the judgment of this Court was stayed i.e. 04/04/1994 and when benefit has been denied to all such assessees, who were before the Hon'ble Apex Court, then by no stretch of imagination, such a benefit beyond 04/04/1994 can be extended to the present respondents. The benefit for all assessees or for all similarly situated assessees would be extended only upto 04/04/1994 as upheld by Hon'ble the Apex Court and, therefore, in my view, both i.e. the Tax Board as well as the DC(A) have erred in holding it otherwise.

13. The Hon'ble Apex Court in the case of Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. (supra) has reiterated the fact in the words that “when law is well settled by judicial pronouncements of the Supreme Court, then ignoring the same by subordinate courts amounts to judicial impropriety and judicial adventurism.” and held as under :-

> “When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to

one of the parties. It is time that this tendency stops.""

16. Thus, in my view, the issue is squarely applicable and in the light of the aforesaid judgment, the petitions are directed to be allowed.

17. The interest was also charged by the AO as per section 58 of the RST Act, which is quoted hereunder :-

"Interest on failure to pay tax or other sum payable.-(1) Where a dealer or a person commits default in making the payment of any amount of tax leviable or payable or of any amount of tax, fee, interest or penalty assessed or determined or of any amount or demand otherwise payable, within the specified time under the provisions of this Act or the rules made or notifications issued thereunder, such dealer or person shall be liable to pay interest on such amount at the rate of two per cent per month for the period starting from the day immediately succeeding the date specified for such payment and ending with the day on which such payment is made.

(2) Subject to the provisions of sub-section (2) of section 70, interest under sub-section (1) shall be calculated,-
(a) at the time of assessment under any section or in continuation of such assessment; and
(b) on payment including adjustment of a demand in full.

(3) The liability to pay interest under the provisions of this section shall also arise for a period which is less than an month."

18. On perusal of the above it envisages that the interest is leviable, if the dealer or a person commits default in making payment of any amount of tax leviable or payable, and admittedly the tax has not paid on or after 4.4.1994 by the assessees and, therefore, in my view the tax having not been paid the interest was certainly leviable and has rightly been levied by the AO. The judgments relied upon by the learned counsel for the respondents referred to above, are not

applicable and distinguishable as all assessments are later than the cut off date, 4.4.1994, and at-least after 4.4.1994 the tax was leviable and once tax was leviable interest being automatic was rightly charged/levied by the AO.

19. Thus, in the light of the above and judgments of the apex court and this court in M/s. R.C. Oil Industries and M/s Bajrang Bali Oil Industries (supra), in my view, all the revision petitions are required to be allowed and accordingly allowed. The orders passed by the Tax Board and DC(A), are hereby quashed and set aside and the order passed by the AO is sustained. No order as to costs.

A copy of this order be placed in each connected file.

(JAINENDRA KUMAR RANKA) J.

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