

Court No. - 1

Case :- SALES/TRADE TAX REVISION No. - 63 of 2023

Revisionist :- The Commissioner, Commercial Tax

Opposite Party :- M/S Neha Sharma

Counsel for Revisionist :- Ravi Shanker Pandey

Counsel for Opposite Party :- Ishir Sripat

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the revisionist and Sri Ishir Sripat, learned counsel for the opposite party.

2. The revision petition was admitted on the following question of law:-

"Whether on the facts and circumstances of the case, the Tribunal was legally justified in holding that granite stone block and pieces sold by the dealer is taxable @ 5% (including additional tax) under entry no.109 of the Schedule II Part A as per notification No.KANI-2-421/XI-9(1) dated 31.03.2011, "sand, gitti, bajri, kankar, stone ballast, stone but not including glazed stone marble and marble chips" despite the fact that granite stone has not been mentioned in the said notification, being exhaustive entity?"

3. The case made out by the revenue is that in the classification, Entry No.109 does not include granite stone, and accordingly, the same should be treated as not classified and taxed @ 14.5%.

4. The argument put forward by Mr. Pandey is that Entry No.109 only includes substances that are of less value as the items included therein are "sand, gitti,bajri, kankar, stone ballast, stone". He submits that granite stone is an expensive item and was never meant to be included in Entry No.109.

5. Entry No.109 specifically includes "stone" with the caveat that the same shall not include glazed stone, marble and marble chips.

6. On an interpretation of the intention of the Legislature, I am of the view that glazed stone, marble and marble chips have been specifically excluded from the definition of "stone" in Entry No.109. If the Legislature wanted to exclude granite stone, the same could have very well been done by the amendment carried out on March 31, 2011. It is my view that if one were to agree with

the submission made by the revenue, one would have to exclude several items that would ordinarily be termed as "stone", which is not permissible in law.

7. Upon perusal of the order passed by the Tribunal, one finds that the Tribunal has held that stones that have not been processed in any manner, would be included in Entry No.109 whereas processed stones that have gone through some kind of procedure would be excluded. The above finding is in consonance with the fact that glazed stone has been specifically excluded from Entry No.109.

8. In light of the above findings, there is no scope of interference in the well reasoned order passed by the Tribunal, and accordingly, this revision petition is dismissed.

Order Date :- 18.1.2024

Kuldeep

(Shekhar B. Saraf,J.)