

[2025:RJ-JP:21651]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Sales Tax Revision / Reference No. 238/2024

Commercial Tax Officer, Commercial Tax Department, Circle-
F, Jaipur-I

-----Petitioner

Versus

M/s Bhagwati Jewellers, 201, Rasta Haldiyan, Jaipur

-----Respondent

For Petitioner(s) : Mr. Sandeep Taneja, AAG with Mr.
Aman Bohra

For Respondent(s) : Mr. Vikram Kumar Gogra

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

21/05/2025

1. Instant Sales Tax Revision is preferred by CTO aggrieved from order dated 16.08.2024 passed by Rajasthan Tax Board in appeal No. 2024/105/Jaipur titled as Bhagwati Jewellers Vs. CTO.

2. Learned AAG appearing on behalf of petitioner submitted that respondent is engaged in trading of gold, silver and bullion and when assessment proceedings for the year 2014-15 was drawn after providing a due opportunity of hearing, the Assessing Officer has come to the conclusion that respondent has violated the provisions of Section 72 read with Rule 38(1) (2c) and input tax credit is not admissible to him but still he availed the input tax credit (ITC). He further submitted that the assessment order was passed against the respondent which was challenged before the Appellate Authority and same was partially allowed but aggrieved from order of Appellate Authority dated 19.08.2019, the petitioner approached the Tax



Board and the respondent has also preferred a cross-objection against order dated 19.08.2019 and the Tax Board has partially allowed the appeal of petitioner on 17.12.2021 but dismissed the cross-objection of respondent.

3. Learned AAG further submitted that aggrieved from order dated 17.12.2021 passed by the Tax Board, the respondent preferred a D.B. Sales Tax Revision Petition No. 01/2022 before this Hon'ble Court and after dismissal on 28.01.2022, the respondent has preferred S.L.P. (Civil) No. 2997 of 2022 but same was withdrawn on 01.09.2022. He further submitted that the respondent has moved an application under Section 174(2b)(ii) of Rajasthan Goods and Service Tax, 2017 seeking re-opening of ex-parte/best judgment assessment proceedings which culminated into an assessment order dated 03.07.2017. He further admitted that on 06.05.2022, a decision was taken to re-open the ex-parte assessment proceedings but same was immediately withdrawn and against the said withdrawal order, a D.B. Civil Writ Petition No. 16460/2022 was filed by respondent before this Hon'ble Court and same was disposed of on 20.12.2023, thereby granting a liberty to petitioner to pass a fresh order. He further submits that the Assessing Authority has passed a fresh assessment order on 13.03.2024 affirming the demand to the tune of ₹3,85,35,928. He also submitted that this order was assailed by the respondent before the Appellate Authority but same was dismissed on 28.06.2024 but on an appeal by respondent the Tax Board has allowed the appeal on 16.08.2024 and set aside the order of assessment passed by



the Tax Assessing Authority which was earlier affirmed by order dated 17.12.2021 by the Tax Board. He also submitted that this it is a classic example of judicial indiscipline, therefore, the matter be admitted for consideration and till the time impugned judgment passed by the Rajasthan Tax Board be stayed.

4. Aforesaid contentions were opposed by learned counsel for respondent and submitted that sequence of litigation clearly indicate that the S.L.P. was withdrawn by respondent in presence of the Government counsel under the assurance that the assessment proceedings will be re-opened. He further submitted that on 06.05.2022 an order was passed for re-opening the same but ante-dated order was passed for revoking the same by Department. He further submitted that there is no ground to consider the instant matter, and the instant STR does not give rise to any substantial question of law which requires consideration by this Hon'ble court. He also submitted that earlier order was passed ex-parte without affording opportunity of hearing to respondent.

5. Learned counsel for respondent has referred the case of Commissioner of **Income Tax, Chenani Vs. Alagendran Finance Ltd. MANU/SC/3110/2007, Commission of Sales Tax Vs. H.M. Esufali H.M. Abdulali (1973) 32 STO 77, Nathmal Tolaram (12 ST C9) Supreme Court, M/s Traders Vs. Additional Commissioner of Trade Tax, Ghaziabad 2008 (43) STJ 178, CTO Vs. Hemraj Udyog 1987- 64- STC -324 (RHC), Presidency Kid Leather (P) Ltd. Vs. Commissioner Tax Officer (1991) 82 STC 136**



(SC), M/s Samsung India Electronics Pvt Ltd. Vs. State of U.P. and Ors. 2024 AHC 43502 AFR, Birla Corporation Limited Vs. CCE 2005 (186) ELT 266 (SC), Indian Oil Corporation Ltd. Vs. CCE 2006 (202) ELT 32 (SC). Quduthur Bros. Vs. Income Tax Officer, Special Circle Bangalore MANU/SC/0340/1960, Commissioner of Sales Tax U.P. Vs. R.P. Dixit Saghidar, Commissioner of Sales Tax and Ors. Vs. Subhash and Company MANU/SC/0131/2003, Jaipur Udyog Limited Vs. CTO (1979) 44 STC 456, Shree Rolex Marbles Pvt. Ltd. Vs. State of Raj. & Ors., Sri Venkataeswara Talkies Vs. Entertainment Tax Appellate Deputy Commr. (1992) 85 STC 178 AP HC, Enviro Legal Action Vs. Union of India & Ors. 1996 AIR 1446, Satyadhan Ghosal Vs. Deorjin Debi AIR 1960 S.C. 941, A.P. Housing Board Vs. Mohd. Sadatullah (2007) 6 SCC 566, Pradeep Mehra Vs. Harijivan J. Jethwa (since deceased Thr. LRS.) & Ors. Civil Appeal No. 6375/2023, St. Teresa's Oil Mills (25 STC 497), Krishna & Co. (124 STC 423), Dev Ji Gokuldas (19 STC 121).

6. Heard learned AAG for petitioner and learned counsel for respondent. Also considered the documents submitted by learned counsel for respondent and perused judgments of Hon'ble Supreme Court and Co-ordinate Bench of this High Court and other High Courts as referred hereinabove.

7. The facts of the case clearly indicate that an order of assessment was passed on 03.07.2017 for the year 2014-15 which was challenged before the Appellate Authority by the



respondent and appeal was partially allowed on 19.08.2019. The petitioner has filed an appeal before the Rajasthan Tax Board and respondent has filed cross-objection.

8. The Rajasthan Tax Board has partially allowed the appeal of petitioner but dismissed the cross-objection. The respondent has preferred D.B. (STR) petition before this Court and same was dismissed on 28.01.2022 by Hon'ble Division Bench. On 06.05.2022, the respondent has preferred an application for re-opening of ex-parte assessment order dated 03.07.2017 which was allowed. In the meanwhile the respondent has preferred an S.L.P. (Civil) before Hon'ble Supreme Court to challenge judgment dated 28.01.2022 in D.B. S.T.R. petition No. 01/2022 but same was dismissed as withdrawn on 01.09.2022. The order of re-opening of assessment dated 06.05.2022 was withdrawn on very same day and same was challenged by respondent by filing D.B. Civil Writ Petition No. 16460/2022 and same was disposed of on 20.12.2023. Afterwards, the Assessing Authority has passed a fresh assessment order on 13.03.2024 confirming the demand to the tune of ₹3,85,35,928 against respondent. This order included interest liability accrued after order dated 03.07.2017. This order was challenged before the Appellate Authority by the respondent but the appeal was dismissed on 28.06.2024. On an appeal before the Tax Board, same was allowed on 16.08.2024 and assessment order dated 13.03.2024 was set aside.

9. For the sake of brevity we are not reproducing the details of judgments as cited by learned counsel for respondent. The



stress was upon observance of principle of natural justice and following law and consistency. Learned counsel for respondent has further filed certain documents which were part of record of the authorities before filing the instant S.T.R. After initial order of assessment, the matter has traveled upto a Division Bench of this Court and the respondent has not got any favorable order but after order dated 06.05.2022 for re-opening of ex-parte assessment proceedings dated 03.07.2017 which was later withdrawn on same day and a D.B. Civil Writ Petition was filed by respondents which was allowed partially to the extent that liberty is granted to the petitioner to pass appropriate order.

10. The Tax Assessment Authority after following the principle of natural justice has passed a fresh assessment order on 13.03.2024, wherein he confirmed the demand which was affirmed till date by Hon'ble Division Bench of this Court. Even SLP (Civil) filed before Hon'ble Supreme Court by respondent withdrawn thereby the first round of litigation was against the respondent. We are dealing a tax matter and not dealing any other matter and normally while deciding the tax matter the Court has to consider fairness, neutrality and consistency in compliance of law and procedure.

11. After a fresh assessment order (adding the interest for remaining period) dated 13.03.2024 as challenged before the Appellate Court and same was dismissed but the Tax Board by impugned order dated 16.08.2024 has not only criticized its previous order dated 17.12.2021 but it has transgressed the authority, even it has failed to appreciate that the order dated



17.12.2021 was affirmed by a Division Bench of this Court, therefore, the matter requires consideration by this Court.

Thus, following substantial questions of law arises from the grounds raised by learned AAG appearing for petitioner.

(a) Whether in the facts and circumstances of the case as well as in law the learned Tax Board was correct in holding that Section 72 of the Rajasthan Value Added Tax Act, 2003 and Rules 38 of the Rajasthan Valued Added Tax Rules of 2006, have no application insofar as the present case is concerned?

(b) Whether in the facts and circumstances of the case as well as in the law the learned Tax Board was correct in not following and ignoring the order dated 28.01.2022 passed in D.B. Sales Tax Revision Petition No. 01/2022 which is authoritative and binding precedent?

(c). Whether in the facts and circumstances of the case as well as in law the learned Tax Board was correct in allowing the Input Tax Credit to the respondent even when the conditions specified in Rule 38 were violated and ignoring that the Input Tax Credit is neither a fundamental nor Constitutional right, but, is a statutory right and available only when the conditions specified in the statute have been complied with?

(d). Whether in the facts and circumstances of the law as well as in the law the learned Tax Board was correct in disallowing the addition to the tune of Rs. 1.80 crores on account of enhanced turnover when the learned Tax Board vide order dated 17.12.2021 had already upheld the addition and the same was never challenged by the respondent?

(e). Whether in the facts and circumstances of the case as well as in law the learned Tax Board was correct in overruling the judgment/ order passed by the coordinate Bench of the Tax Board instead of referring to the Chairperson in terms of Rule 17(3) of the Rajasthan Tax Board Regulation 2017?

12. Admit.

13. Considered stay application.

14. Having considered the entirety of facts and circumstances of the case and also the fact that the tax Board in second round of litigation has passed an order contrary to orders passed in litigation round-oe wherein the matter traveled upto Hon'ble supreme Court, therefore, the effect and



operation of order dated 16.08.2024 passed by the Rajasthan Tax Board, Ajmer shall remain stayed till disposal of this STR.

15. Stay application stands disposed of.

16. A perusal of order dated 16.08.2024 passed by Rajasthan Tax Board, Ajmer clearly indicate that the Bench of two members Mr. Hemant Jain and Mr. Satish Kumar Upadhyay has observed that the true position of the case could not be projected or place before Hon'ble High Court that the dealer has not been charged with the offence of not issuance the invoices of transactions and dealer's purchases are not vitiated by any violation of Rule 38.

17. The Tax Board has also observed (as mentioned in para No. 16) that Hon'ble Rajasthan High Court wrongly observed the factual matrix of the case that no invoice has been raised/issued by the appellant-petitioner, whereas it has proved case that the appellant has issued all the invoices with mention of 'Cash words therein'. Further, the several observations were also made in the impugned order by the Tax Board.

18. The order dated 28.01.2022 in D.B. STR No. 01/2022 is placed on record as Annexure-4 and it is apparent on the record that after hearing, only assessee (respondent-herein), order was passed by Hon'ble Division Bench and if wrong facts were placed before a Division bench by respondent, then a party is responsible but the Tax Board has no authority to comment or observe anything about the order of Hon'ble Division Bench of this Court. The observations of the Tax Board is an act of judicial indiscipline.



19. Considering a full-Bench judgment of Gujarat High Court in case of **State of Gujarat Vs. Gordhandas Keshavji Gandhi reported in AIR 1962 Guj. 128, Sundaradas Kanyalal Bhathija Vs. The Collector, Thane reported in AIR 1991 SC 1983, State of Tripura Vs. Tripura Bar Association (1998) 5 SCC 637, S.I. Rooplal and Ors. Vs. Lt. Governor Through Chief Secretary, Delhi & Ors. (2000) 1 SC 644, Official Liquidator Vs. Dayanand and Ors. (2008) 10 SCC 1 and Royal Orchid Hotels Limited and Ors. Vs. G. Jayarama Reddy and Ors. (2011) 10 SCC 608**, it is necessary for the Rajasthan Tax Board to follow the judgment of this Court as a Sub-ordinate Tribunal to this Court.

20. The Registrar (Judicial) is directed to place order dated 16.08.2024 passed by Rajasthan Tax Board before Hon'ble the Chief Justice for considering the matter of judicial indiscipline against the Division Bench of the Rajasthan Tax Board.

21. List this matter in the month of August, 2025.

(ASHOK KUMAR JAIN),J

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