

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

SB Sales Tax Revision Petition no. 718/1999

Commercial Taxes Officer,
Special Circle, Alwar

VS

M/s Indian Shaving Products Ltd.
Bhiwari

Date of Judgment ::: 10/4/2015

PRESENT

HON'BLE MR. JUSTICE J. K. RANKA

Ms Tanvi Sahay for the petitioner.

1. This Sales Tax Revision Petition is directed against the judgment dated 4/2/1995 passed by the Rajasthan Sales Tax Tribunal, Ajmer in Appeal no. 68/91/Alwar by which appeal of the Revenue was dismissed. It relates to assessment year 1988-89.
2. The brief fact which can be noticed are that the respondent-assessee, is in the business of manufacturing of razors and blades and other items, it had distributed free samples to the tune of Rs. 97,410/- which was treated as sales turnover by the Assessing Officer. The total turnover of the assessee being R. 91,11,753/-. However, both Deputy Commissioner (Appeals) as well as Sales Tax Tribunal came to the conclusion that providing of free samples

could not have been treated liable to sales tax and accordingly the levy of sales tax on providing the free samples was set aside, so also interest and penalty.

3. Counsel for the revenue strongly contended that the Sales Tax Tribunal was unjustified in holding that free samples cannot be taxed as ultimately after the samples being provided the assessee had substantially gained. In other words, it is because of the free samples turnover of assessee rose sharply. She contended that there is no exemption on free samples and the Assessing Officer was correct in coming to the said conclusion.

4. I have considered the arguments advanced by counsel for the revenue and in my view, sales Tax Tribunal has come to a right conclusion observing that free samples is in accordance with trade practice and is one of the major factor where manufacture/producer can put its product in the market. Marketing through free samples is commonly accepted trade practice which one is required to resort in the competitive business environment. The revenue gains substantially when the samples are accepted over the years by the consumers who later on purchases the commodity. It is also noticed that the free samples in the instant case is negligible to the total turnover. The

free samples provided to the dealer who in turn provides the same to selected consumers cannot be said to be liable for sales tax. It has no marketable value. To say that the samples provided by assessee can be held to be liable to sales tax, in my view, does not appear to be justified and Tribunal has rightly come to the said conclusion

5. One more factor to dismiss the present petition is that the Tribunal decided two appeals by a common order in appeal nos. 68/91 and 69/91/Alwar and it is admitted that other revision came up before this court in STR no. 888/1999 and this court vide order dated 26/3/2008 has already dismissed the other connected petition on the same facts and same material and one being against the order under RST Act and another petition against the order under the CST Act but the question remains the same in both the petitions. Admittedly the connected revision petition decided by this court has attained finality. For this reason also, the present petition does not survive. The other question which has been raised is about penalty under section 7-AA of RST Act when the appeal has been allowed by the Rajasthan Sales Tax Tribunal holding that the samples cannot be held to be in the nature of sale, therefore question of penalty does not

arise. Even otherwise there is no finding that there was mis-representation of the assessee as all the facts were available before the Assessing Officer, therefore, in the light of the same, no interference is required in the order of Rajasthan Sales Tax Tribunal. The revision petition being devoid of merits is dismissed. Question of law is answered against the revenue and in favour of the assessee.

[J. K. RANKA], J.

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Certificate: All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.

Om Prakash PA