**(2000) 11 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No :** Sales Tax Revision Petition No. 605 of 1999

A.C.T.O. APPELLANT

Vs

Ashok Trading Company RESPONDENT

**Date of Decision :** 07-11-2000

**Acts Referred:**
Rajasthan Sales Tax Act, 1954 — Section 22A, 22A(7), 22C

**Citation :** (2001) 124 STC 377

**Hon'ble Judges :** Rajesh Balia, J

**Bench :** Single Bench

**Advocate :** Sajeev Johari, for the Appellant; Govind Ram Verma, for the Respondent

**Final Decision :** Allowed

## Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. This revision is directed against the order passed by the Rajasthan Tax Board, Ajmer, dated June 9, 1998 (annexure 8) affirming the order passed by the Deputy Commissioner (Appeals) setting aside the penalty levied u/s 22A(7) of the Rajasthan Sales Tax Act, 1954 (for short, "the Act of 1954"). The ground that has prevailed with the two appellate authorities for deleting the penalty is that the respondent-assessee was carrying his own goods without delivering the same to the transporter for carriage. In other words he was found the goods on his person as a passenger and not transporting the goods through carrier. Section 22A(7) does not apply inasmuch as such goods cannot be considered to be goods under transport.

3. The facts of this case which are not in dispute are that Mr. Bhagwan Dass, proprietor of firm Ashok Trading Agency, Jodhpur when he was checked at Railway Station, Raikabagh by travelling in Delhi-Jodhpur Superfast was found carrying with him nine pieces of tape-recorders, some radio parts and cassettes. He in his statement, on the spot admitted that these goods, which he purchased

at Delhi without any document and without any builty on payment of Rs. 50,000. The goods were not even booked. In his written application dated October 27, 1991 he further stated that he is importing the goods without any documents and since he is in need of selling goods during the Diwali season and he accepted the mistake and requested that date may be fixed before Diwali and goods may be released after imposing penalty in accordance with law. Taking into consideration the statement and the written application the assessing authority levied the penalty u/s 22A(7) and also raised a demand for anticipated tax liability. Keeping in view the nature of transaction which the respondent has indulged that he is not likely to pay tax in future when the goods are sold.

4. In the aforesaid circumstances the appellate authorities set aside the aforesaid order on the ground that goods cannot be treated under transport.

5. In this connection Section 22A(3) imposes an obligation on the owner or the officer in-charge of a vehicle, boat or animal shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and such other documents, as may be prescribed in respect of the goods carried in or in the vehicle, boat or animal, as the case may be, and produce the same before any officer in-charge of check-post or barrier or any other officer as may be empowered by the Government in that behalf. The owner or person in-charge of a vehicle, boat or animal entering the State limits or leaving the State limits shall also give a declaration containing such particulars as may be prescribed of the goods carried in or on the vehicle, boat or animal, as the case may be, before the officer in-charge of the check post or barrier or the officer empowered. In this behalf Explanation II of Sub-section (6) which reads as under :

Explanation II.--For the purpose of this section the goods under transport means goods which have been handed over to a carrier and complete delivery thereof has not been taken from such carrier.

6. A perusal of Explanation II envisages that goods under transport, i.e., goods which have been delivered to the transporter and remained to be under transporter until the delivery thereof has been taken.

7. So far as the provisions of Section 22A(3) are concerned it is obvious that this provision does not apply to the passenger who are carrying their own goods at their own risk without involving the agency of transporter for the carriage of goods from one destination to another and the responsibility in this regard is of the owner or person in-charge of the vehicle in respect of goods carried by him as a transporter to carry the requisite documents.

8. The provision of Section 22C reads as under :

Section 22-C. Import of goods into the State against declaration.--(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import, or otherwise receive any goods from outside the State, as notified by the State Government, of the value of Rs. 1,000 or more for use, consumption or disposal within the State, shall obtain the prescribed form of declaration on payment of prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or in case there is no such place, where he ordinarily resides :

Provided that where an importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, obtain the prescribed form of declaration and where he fails to obtain such form of declaration, it shall be presumed that such goods have been purchased by such person within the State.

(2) Such form of declaration shall be carried with the goods and presented at the entry check-post along with other documents prescribed u/s 22-A and the provisions of the said section shall apply to such import.

9. A perusal of Section 22-C leaves no room of doubt that obligation under it is cast not on the transporter of goods under transport to furnish declaration and produce the same at the time of entry. It is the responsibility of the person importing the goods to make a declaration as required under the aforesaid provisions and Rules framed for that purpose. This obligation is on the importer and not on the transporter. The respondent undoubtedly was a person who was an importer as well as a person who brought goods from outside the State for disposal within the State. The goods in question were notified goods and the respondent had not complied with any provision deliberately. After following the procedure of giving an opportunity of hearing ordinarily the enquiry u/s 22-C is directed in respect of parrying of a declaration by the importer at the time of entering all the goods within the State while u/s 22A is attracted in respect of goods under transport.

10. In the peculiar facts and circumstances of the present case the respondent-assesses admitted throughout that he has imported goods from Delhi within the State of Rajasthan for sale and it was unaccompanied with any documents or declaration as prescribed and further the importer was in a hurry to sale those goods before Diwali ends. The fact that the goods have been purchased in cash at Delhi without any bill or without any other documents, leads to only conclusion that transaction in question was under hand transaction clearly aimed at indulging in the business of sale within the State of Rajasthan without payment of any tax. Therefore import was not only in violation of Section 22-C of the Act on admitted facts and the mens rea of not following the requirement of law with intention to evade or avoid tax is also writ large.

11. In these circumstances ultimate contrary conclusion reached by the appellate authorities in the facts and circumstances of the present case cannot be sustained.

12. Accordingly this revision is allowed. The orders passed by the appellate authorities are set aside and that of the assessing authority is restored.

 

There shall be no order as to costs.