(1985) 01 RAJ CK 0076

In the Rajasthan High Court

Case No : Sales Tax Reference No. 29 of 1977

A.C.T.O. APPELLANT

Vs

Poonam Chand Uttamchand RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 14(4)(A)
Rajasthan Sales Tax Rules, 1955 — Rule 2(b), 34

Citation : (1985) RLW 201 : (1985) 1 WLN 329

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Judgement

S.N. Bhargava, J.—This is a reference u/s 15 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the Act) by which the Board of Revenue has referred the following question of law for opinion of this Court:

Whether under the facts and circumstances of the case the Special Appeal presented by Shri Baluram Sharma D.P. was improperly presented?

2. Facts, briefly stated, relating to the disposal of this reference may be stated as under: Assessing Authority (A.C.T.O., Beawar) determined the tax liability of the respondent M/s. Poonam Chand Uttam Chand of Beawar. The assessee went in appeal to the Deputy Commissioner (Appeals) Commercial Taxes, Ajmer against the order of the Assessing Authority which was allowed. Against this order of the Deputy Commissioner (Appeals) Commercial Taxes, Ajmer, the State of Rajasthan moved an application u/s 14(1) before the Board of Revenue for revising the said order. A Single Member Bench of the Board of Revenue upheld the order of the Deputy Commissioner (Appeals) Commercial Taxes, Ajmer, and rejected the revision petition by his order dated January 18, 1973. The Assessing Authority preferred a Special Appeal u/s 14(4)(A) of the Act against the order of the single Member Bench. A preliminary objection was raised before that Bench that there was no proper presentation of the Special Appeal before the Board as the same had been presented by Balulal Sharma, who did not have a valid letter

of authority or a ''vakalatnama'' authorising him to act on behalf of the appellant. The Division Bench accepting this contention dismissed the appeal by its order dated June 10, 1974. The Assessing Authority filed an application u/s 15(1) of the Act seeking a reference to this Court on the following question of law:

Whether under the facts and circumstances of the case the Special Appeal presented by Shri Baluram Sharma D.P. was improperly presented?

Before the said reference application could be decided by the Board the prescribed period of 180 days expired. Therefore, the Board did not consider it necessary to make a reference to the High Court. Thereupon the Assessing Authority filed a reference application u/s 15(3)(A) of the Act before the High Court seeking direction to the Board to state and refer the above question of law and the Hon''ble High Court by its order dated September 23, 1976 passed in S.B. Civil Sales Tax Reference Application No. 173/75 directed the Board of Revenue to refer the said question for its opinion and thereupon the Board of Revenue has submitted the statement case by order dated May 20, 1977 referring the above noted question for the opinion of this Hon''ble Court. To complete the narration of facts it will be necessary to mention here that the memo of Special Appeal filed before the Revenue Board was signed by Assessing Authority (Assistant Commercial Taxes Officer Ward B, Beawar) and the said appeal was accompanied by an affidavit of the Assessing Authority wherein it has been mentioned that the Assessing Authority had contacted the Government Advocate Shri. B.R. Sharma and he after studying the case gave him the draft for the Special Appeal and thereafter Special Appeal was filed by Shri Balu Ram Sharma on May 17, 1973.

3. Before we proceed to discuss the question of law, it will be profitable to quote here Section 14(4A) which runs as under:

(4A) Subject to any rules that the Government may make in that behalf, a party aggrieved by an order of a single Member shall have the right to make a special appeal to a bench consisting of two or more members of the Board within (ninety days) from the date of (communication of) the order of the single member.

Rules 2(b) and 34 of the Rajasthan Sales Tax Rules run as under:

(b) "agent" means a person authorised in writing to appear on behalf of a dealer or person before any Sales Tax authority.

34. Presentation of appeal-The memorandum of appeal shall be presented by the appellant or his pleader or his agent to the appellate authority or such member of his staff as the appellate authority may appoint in that behalf, or may be sent by registered post addressed to the appellate authority.

Our attention has been drawn to State of Raj. v. M/s. Gorilal Ajmera 1967 RRD 224 where the Board of Revenue relying on Lutfar Rahaman Laskar Haji Kabadali Naskar Vs. The State of West Bengal and Others, has held that the Government Pleader need only intimate to the Court that he is representing the Government in the proceedings before the Court. No stamp power or ''vakalatnama'' is required to be filed. Our attention was also drawn to a Division Bench decision of this Court reported in the Commercial Taxes Officer Special Circle, Kota v. M/s. Ayurved Sewashrami (P.) Limited, Udaipur 1973 Taxes Reporter 62 wherein it was observed as under:

At some earlier hearing a preliminary objection was raised that the application was not properly presented as it was not accompanied by a Vakalatnama in favour of the Government Advocate authorising him to present the application. In consequence of this preliminary objection the Government Advocate filed a Vakalatnama and prayed that non-submission of Vaklatnama was a mere curable irregularity and should be condoned. After, hearing the counsel for the parties we waive the irregularity and treat the presentation of the application as a valid one.

4. Learned counsel for the Department has drawn out attention to C.T.O., Spl. Circle I v. Sanghi Oxygen Co. 1974 RRD 93 wherein the Board of Revenue relying on Shiv Narain Vs. Deputy Director (C), Mathura and Others, has held that since the notices were issued of the Special Appeal to the assessee therefore the Court should be denied to have waived the irregularity. This authority of the Revenue Board was relied again by the Board of Revenue in C.T.O., Spl. Circle-II, Jaipur v. M/s. Indl. Chem. & Plastics 1974 RRD 407 and the preliminary objection raised therein that the revision was not presented by the Assessing Authority was rejected. Learned counsel for the Assessee has drawn out attention to the earlier decision of the Board of Revenue in State of Raj. v. M/s Gemini Murti Kalakar 1973 RRD 608 wherein the Revenue Board has taken the view that the presentation of the appeal should have been made by the appellant or his Pleader or his Agent having authority in writing and since the U.D.C. of C.T. Department had no authority in writing as required by Rule 2(b) and, therefore, he was not the proper agent. Hence memo of appeal filed by him was not properly presented. Learned counsel for the Department drew our attention to Upper India Sugar Mills v. Commr. of Sales Tax 1966 STC 536 wherein the Division Bench of the Allahabad High Court held "where a person who presented a revision application of the Commissioner of Sales Tax was one employed by the Commissioner and was acting in the ordinary course of his duties when he delivered the revision application. The revision was properly presented as the Peon was held duly authorised by the Commissioner to present the revision application. A reference to Rule 34 will show that the appeal could be presented by the appellant or his Pleader or his Agent or may be sent by registered post addressed to the Appellate Authority which clearly shows that the legislature never attached any importance or any sanctity for presentation of the appeal personally because it could be sent even by registered post. More over in the present case the memo of appeal was signed by the Assessing Authority himself after consulting Mr. Balu Ram Sharma who had filed the appeal which was sent to him by the Assessing Authority duly signed. Thus keeping all these in view it cannot be said that the Special Appeal presented by Balu Ram Sharma D.P. was improperly presented. It will be worthwhile to note here that the Revenue Board

also in the later decision in M/s. Khandelwal Enterprise v. A.C.T.O. Ward-I(9) has taken the view that the defect of filing of memorandum of appeal presented by the person who was not authorised in writing as required by Rule 2(b) of R.S.T. Rules is curable by allowing the person presenting the appeal to submit an authority at a subsequent date as soon as, the defect is brought to his notice.

5. In the result, the question of law is answered in the negative, in favour of the Department and against the Assessee.

