(2005) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision No. 393 of 2005

A.C.T.O. APPELLANT

Vs

White Marble House RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 65, 86

Citation : (2006) 148 STC 14

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant;

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition is directed against the order dated September 11, 2003 passed by the Tax Board whereby, the Tax Board rejected the Revenue''s appeals as well as the assessee''s cross-objections. The Revenue in revision came before this court on the ground that the Tax Board has erred in setting aside the penalty u/s 65 of the Rajasthan Sales Tax Act, 1994, which was imposed by the assessing authority on the ground that C forms received from the purchasing dealer of Kerala were not found to be genuine and accordingly, the selling dealer, the present assessee, was not entitled to the benefit of concessional rate of four per cent against such C forms. The learned Deputy Commissioner (Appeals) upheld the imposition of additional tax and interest. However, the penalty imposed on the selling dealer was set aside.

2. Aggrieved against the same, the Revenue preferred a second appeal before the Tax Board for restoration of penalty u/s 65 of the Act but the Tax Board by the impugned order rejected the Revenue''s appeal on the ground that the assessing authority did not establish the collusion of respondent-assessee in such submission of C forms, which were not found to be genuine by the assessing authority, which were received from Kerala dealers.

3. The explanation given by the assessee before the authorities below that the goods in question were sold by him in the course of inter-State trade through commission agents and the C forms in question were also received through the agents and therefore, he had no knowledge of such C forms being not genuine or fake. The learned assessing authority while rejecting the said explanation of the assessee proceeded merely on the basis of assumption that since the assessee entered into transaction of inter-State sales with the same dealer for six times during the year and therefore, he must have met the purchasing dealer six times definitely and therefore, the submission that the selling dealer did not meet the purchasing dealer does not appear to be correct. Accordingly, the assessing authority proceeded to impose the additional tax, interest and penalty u/s 65 of the Rajasthan Sales Tax Act at double the amount of additional tax in question. The learned assessing authority however, did not hold any further enquiry into the matter nor any of such witnesses as could be relevant in the case were summoned or otherwise produced before the assessing authority and the assessing authority appears to have proceeded merely on his own unfounded assumptions to impose the penalty in question upon the selling dealer before him. The said penalty was therefore, set aside by the Deputy Commissioner (Appeals) and such setting aside of penalty was upheld by the Tax Board also.

4. From the perusal of the impugned orders, it does not appear that the assessing authority made any effort to establish the collusion of the selling dealer in production of the false or fake C forms before him. In the absence of any enquiry having been held, the two appellate authorities were justified in setting aside the penalty u/s 65 of the Rajasthan Sales Tax Act upon the selling dealer. This being essentially a finding of fact as to whether the selling dealer was responsible in production of such fake or bogus C forms or not, no question of law as such arises in the matter.

5. In view of the concurrent findings of both the appellate authorities, no interference is required by this court in revisional jurisdiction u/s 86 of the Rajasthan Sales Tax Act.

6. Consequently, there is no force in the present revision petition. The same is accordingly dismissed.

