(1992) 02 RAJ CK 0040

In the Rajasthan High Court

Case No : Sales Tax Revision No. 93 of 1987

A.C.T.O. Ward-C — APPELLANT

Vs

Mahaveer Timber Mart — RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 16(1)(b)

Citation : (1992) 2 WLC 233 : (1992) WLN 36

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Judgement

N.K. Jain, J.—A Division Bench of this Court vide order dt. 22.8.77 has referred the matter to the Board of Revenue to frame the following question of law to be referred to the High Court:

Whether on the facts and circumstances of the case the Board of Revenue was justified in holding that no penalty was leviable on the assessee u/s 46(1)(b) of the Rajasthan Sales Tax Act, 1954.

2. Brief facts of the case are that the A.C.T.O., Pali for the assessment Year 1966-67 and 1967-68 of the period 25.10.65 to 2.11.67 assessed the assessee M/s. Mahaveer Timber Mail and passed the assessment order u/s 10(3) and imposed penalty for late filing return u/s 16(1)(c) and also imposed penalty u/s 16(1)(b) on 27.12.1968. The assessee preferred an appeal before the Dy. Commissioner (Appeals), Jodhpur challenging interalia the penalty imposed. The Dy. Commissioner (Appeals) accepted the appeal on 4.12.1969 holding that the tax was not determined u/s 7(2) nor u/s 10 of the R.T. Act and not become due prior to the filing of the returns before the assessment order was passed and penalty was held to be illegal. Being aggrieved, the assessing authority, filed a revision before the Board of Revenue for Rajasthan. The learned Single Member of the Board relying on State v. Ghasilal 1965 (15) STC 318 dismissed the revision vide order 31.12.73 and upheld the order of Dy. Commissioner (Appeals). A special appeal was filed before the Division Bench of the Board of

Revenue, Ajmer and the same was dismissed on 16.7.1975. Thereafter the assessing authority moved an application u/s 15(1) of the Act of 10.11.1975 requesting the Board to refer the question to the High Court. The reference application was not decided within 180 days and the application was filed vide order dt. 27.10.76. The assessing authority again moved an application u/s 15(3A) of the Act before this Court to direct the Board of Revenue to State the case and refer the question, on this, above question was referred.

3. Mr. Mehta, has submitted that the Dy. Commissioner (Appeals) has wrongly relied on State v. Ghasilal reported in 1965 (14) STC 318 while setting aside the penalty u/s 16(1)(h) of the Act.

4. I have heard Mr. B.C. Mehta, learned Counsel for the Revenue and perused the record. The sole proprietor Bhikamchand of the assessee M/s. Mahaveer Timber Mart has expired and a notice to his legal representative was issued but none has appeared despite service.

5. There is an amendment by which Section 7(2A) was incorporated on 29.4.1963 which reads as under:

(2A) Notwithstanding anything contained in Sub-section (2) the State Government may by notification in the Official Gazette require any dealer or class of dealers specified therein, to pay tax at intervals shorter than those prescribed under Sub-section (1). In such cases, the tax according to his accounts shall be deposited at the intervals'' specified in the said notification in advance of the return and the return shall be accompanied by the treasury receipt or receipts, of any Bank authorised to receive money on behalf of the State Government, for the full amount of tax due shown in the return.

6. There is in notification at S. No. 80C No. F5 (40) FDRT/63 dt. 20.11.64 by which dealer should pay tax at intervals specified in column No. 2 thereof i.e. monthly within 21 days of the close of each month of his year of accounts.

7. In State v. Ghasilal (supra) their lordships has considered the word ''due'' as is occurred in the original Section 16(1)(b) but the word ''due'' in original Section 16(1)(b) was deleted by Act No. 13 of 1964 and in its place a new Section 16(1)(b) was substituted with effect from 4.5.1964.

8. In this case the assessee for the period 25.10.65 to 2.11.1967 has deposited the tax in six instalments and the same was considered to be irrelevant, late and imposed the penalty as per the existed provisions of law which were in force at that time. Section 16(1)(b) reads as under:

16 Offences, Penalties and Prosecutions, etc:

(1) If any person-

(a) ...

(b) has without reasonable cause failed to pay within the time allowed any tax, fee or penalty; or

9. Thus, the liability or tax u/s 16(1)(b) had accrued even before the assessment order or before the return was filed. It was Incumbent upon the assessee to pay the tax as per Section 16(1)(b) within time and also in view of Section 7(2A) which was in existence as incorporated on 29.4.63 as stated above. Though Section 16(1)(b) was completely deleted by Section 13A of the Rajasthan Act No. 11/1969 w.e.f. 2.5.1961 but we are not concerned with this deletion for the present case, and it is clear that during the assessment year the old Section 16(1)(b) was in force and, therefore, State v. Ghasilal (supra) was not applicable. In view of this, the Dy. Commissioner (Appeals) was not justified in setting aside penalty of Rs. 1405/- imposed u/s 16(1)(b) of the Act so also the Board of Revenue in view of the State v. Ghasilal''s case (supra) which was not apparently applicable as stated above. Under the facts and circumstances of the case, the question referred above is answered in negative form in favour of the Department and against the assessee.