(2000) 12 RAJ CK 0032

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 800 of 2000

A.C.T.O. Ward-I Circle-B, Bikaner — APPELLANT

Vs

M/s Divisional Superintedent Engineer, Northen Railway, Bikaner — RESPONDENT

Date of Decision : 04-12-2000

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 7

Citation : (2001) 3 RLW 1501 : (2001) 2 WLC 274 : (2001) 2 WLN 173

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant;

Final Decision : Dismissed

Judgement

Balia, J.

(1). This petition is filed against the order of the Rajasthan Tax Board dated 15.06.2000 which relates to setting aside the penalty levied u/S. 7AA of the Rajasthan Sales Tax Act, 1994 for late Tiling of returns for the Assessment Year 1987-88 and 1989-90. It is not in dispute that before imposing the penalty u/S. 7AA, no notice was issued to the assessee. It is contended by the learned counsel for the petitioner that no discretion is vested in the Assessing Officer for levying the penalty and, therefore, rules of natural justice are implicitly excluded before imposition of penalty u/S. 7AA for late filing of the returns.

(2). The contention of the learned counsel for the petitioner is stated to be rejected. The provisions of Sec. 7AA reproduced below clearly answers the question raised by the petitioner:-

"7AA. Penalty for failure to furnish returns - If the assessing authority in the course of any proceedings under this Act, is satisfied that any dealer has without reasonable cause failed to furnish the returns under sub-Sec. (1) of Sec. 7 within the time allowed, he may direct that such dealer shall pay by way of penalty, in addition to the amount of tax, if any, payable by him, rupees ten per day in the case where tax is required to be paid every month under sub-Sec. (2A) of Sec. 7 and rupees five per day in all other cases for the period during which the default in the furnishing of such return continues but not exceeding in the aggregate twenty per cent of tax assessed for the period to which the return-relates."

(3). It clearly states that penalty is imposable only if the Assessing Officer in the course of any proceedings is satisfied that "any dealer has no reasonable cause" and fails to furnish returns within the time allowed, the very subject of the satisfaction that the dealer has failed to furnish the returns without reasonable cause invites the application of rules of natural justice and giving a notice to the assessee to show explanation about reasons for such delay which can only be disclosed by the assessee and the Assessing Authority cannot presume that no reasonable cause existed. Whether the delay caused in filing the returns is with or without reasonable cause can only be decided by examining the cause furnished by him. This satisfaction of the Assessing Authority cannot be reached without giving notice to the assessee.

(4). The conclusion reached by the Tribunal, in my opinion, in dele ting the penalty u/S. 7AA which was imposed without giving notice to the assessee is unexceptional. The revision petition is dismissed.