(2011) 07 RAJ CK 0014

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 220 of 2011

Assistant Commercial Tax Officer — APPELLANT

Vs

Kamdhenu Spat Ltd. and Another — RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(10)(a)

Citation : (2013) 57 VST 379

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant; P.K. Kasliwal and C.M. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the parties. The petitioner has preferred this revision petition challenging the impugned order dated July 6, 2007 passed by the Rajasthan Tax Board, Ajmer, whereby the petitioner''s appeal has been dismissed.

2. The assessing officer vide its order dated July 9, 2002, levied penalty u/s 78(10)(a) of the Rajasthan Sales Tax Act, 1994, but on an appeal filed by the assessee, the same was set aside. Thereafter, an appeal was preferred before the Rajasthan Tax Board, but the same was also dismissed.

3. Submission of learned counsel for the petitioner is that although all the relevant documents including form ST 18A were available and produced for checking at the time of checking of the vehicle/goods, but since seal of check-post of Commercial Taxes Department of the State of Rajasthan was not there on the documents, therefore, there was no illegality for levying the penalty by the assessing officer. He, therefore, contended that the orders passed by both the appellate authorities may be set aside and order passed by the assessing officer may be restored.

4. I have considered the submissions of learned counsel for the parties in the light of reasons assigned by both the appellate authorities for setting aside the penalty order passed by the assessing officer.

5. The learned counsel for the petitioner does not dispute that all the required documents, as per provisions of section 78(2)(b) of the Act of 1994, were available and produced at the time of checking of vehicle/goods and required tax had already been paid by the assessee. So far as seal of check-post of the State of Rajasthan on the documents is concerned, the same is not a mandatory requirement, as per provisions of section 78(2)(b) of the Act of 1994.

6. The Division Bench of this court in State of Rajasthan v. Tajiander Pal reported in [2003] 6 Tax Update Part 3 page No. 84 held that these provisions are not mandatory and are directory in nature. The Division Bench of this court further held that if all the requisite documents are available at the time of checking of vehicle/goods, then intention to evade tax cannot be inferred. Both the appellate authorities have recorded a concurrent finding that there was no mens rea on the part of the assessee, as all the required documents were available and tax had already been paid by the assessee, therefore intention to evade tax cannot be inferred.

7. In these circumstances, I do not find any illegality in the concurrent finding recorded by both the appellate authorities, so as to interfere with the same in this revision petition. No question of law is involved in this revision petition and the same is, accordingly, dismissed in limine.