
(2014) 01 RAJ CK 0194

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 221 of 2010

Assistant Commercial Tax Officer

APPELLANT

Vs

M/s. Smt. Haseena and Another

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(10A), 84

Citation : (2014) 01 RAJ CK 0194

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant;

Judgement

Bela M. Trivedi, J.—The present Sales Tax Revision Petition arises out of the order dated 12/12/2007 passed by the Rajasthan Tax Board, Ajmer in Appeal No. 1404/2006/Alwar, whereby the Tax Board has dismissed the appeal filed by the petitioner-appellant. The short facts are that on 22/08/2004, a vehicle bearing No. UP-15F-0533 was stopped and checked at the Kishangarh was Alwar Road and the said vehicle was found carrying MS Electrodes. The Incharge of the said goods had produced the invoice, however, it was found that the said vehicle was not stopped at any of the check-posts as the document did not show any endorsement of any seal of any check-post. The Assessing Authority therefore issued the notice to the respondent-assessee u/s 78(10-A) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the said Act") and after taking into consideration the reply filed by the respondent-assessee, imposed the penalty u/s 78(10-A) of the said Act @ 50% of the valuation of the goods vide the order dated 23/08/2004. Being aggrieved by the said order, the respondent had preferred an appeal u/s 84 of the said Act before the Commissioner (Appeal-I), Commercial Tax, Jaipur (hereinafter referred to as "the Appellate Court"). The said appeal was allowed by the Appellate Court vide the order dated 5/11/2005, and the order of the Assessing Authority was set aside. Against the said order passed by the Appellate Court, the petitioner had preferred an appeal before the

Tax Board, which was dismissed by the impugned order dated 12/12/2007.

2. Heard the learned counsel Mr. R.B. Mathur for the petitioner.

3. After arguing the case for some time, the learned counsel for the petitioner has fairly stated that the issue involved in the petition is covered by the decision of Coordinate Bench of this Court delivered in the case of Assistant Commissioner, Commercial Taxes Department, Bhiwada v. M/s. Chotey Singh, Driver in S.B. Sales Tax Revision Petition No. 389/2008, decided on 17/04/2013 as also in the case of State of Rajasthan & Anr. v. Tajiander Pal [(2003) Tax Up-Data Vol. 6 (3)], in which the Court had held that the penalty cannot be imposed on driver when all the papers were found to be complete. The relevant observations, which are reproduced hereunder:- ...In the present case also, it is finding that all requisite documents were present when the officer authorized under sub-sec. (3) required the person carrying such goods to produce such documents and the vehicle was stopped when required to do so. In fact, no violation of sub-sec. (5) of sub-sec. (8) have been found by the assessing authorities also. In that view of the matter, the learned Single Judge was right in coming to the conclusion that no intention to avoid tax can be spelt out from the proceedings of the cases, intention to avoid tax can be spelt out from the proceedings of the cases. As we have found earlier that no notice to show cause against the breach of sub-sec. 10-A has been issued nor any ingredient of sub-sec. 10-A can be spelt out from the show cause notice for sustaining the penalty after affording an opportunity of hearing. In that respect, therefore, the penalty apparently was not sustainable on the plain reading of provisions of sub-sec. 10-A coupled with the show cause notice which was given to the Driver of the vehicle to show cause why the penalty could be imposed.

In view thereof, we are of the opinion that to the extent, the learned Single Judge found that admittedly, the Driver was carrying all necessary papers, invoices and no tax was due makes out a case that the vehicle was carrying the goods along with requisite documents without intention to avoid or evade tax. That being so, the discretion vested in the assessing authority was not liable to be exercised even if there was technical violation of sub-sec. 10-A to impose the penalty equal to 50% of the value of the goods, though as noticed by us no case of violation of sub-sec. (10-A) was spelt out in notice under Sec. 78. Thus, penalty came to be imposed without affording opportunity to the driver to defend himself. The levy of penalty thus being in breach of requirements of sub-sec. (10-A) and in breach of principles of natural justice, could not have been sustained.

In view of the aforestated legal position and in view of the fact that there were concurrent findings of facts recorded by the Appellate court as well as by the Tax Board, this Court is not inclined to interfere with the impugned order passed by the Tax Board. The petition being devoid of merits deserves to be dismissed and is, accordingly, dismissed.