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(2011) 12 RAJ CK 0084

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 338 of 2011

Assistant Commercial Tax Officer — APPELLANT

Vs

Narendra Kumar and Company — RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2013) 60 VST 296

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Amit Ratnawat on behalf of R.B. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—A challenge has been made in this revision petition to the order dated October 24, 2002, passed by the Rajasthan Tax Board, Ajmer, whereby the Tax Board has been pleased to uphold the order dated August 28, 2000, passed by the appellate authority, Deputy Commissioner (Appeals), Commercial Taxes setting aside the order dated October 10, 1999, whereby penalty was levied on the assessee u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter to be referred "the 1994 Act") by the assessing officer. The facts of the case are that in the course of transit of goods, a vehicle carrying goods was checked on October 3, 1999 and even though other documents relevant to authenticity of the transaction were found, yet the requisite declaration form ST-18C was found missing. Consequently a notice came to be issued to the assessee. In reply thereto, the assessee filed copy of the declaration form ST-18C before the assessing officer. The assessing authority however did not take into consideration the subsequent furnishing of form ST-18C, on notice, nor recorded its opinion with regard to alleged intention of the assessee to evade tax and yet imposed a penalty on a misinterpretation of section 78(5) of the 1994 Act, to hold that in view of the initial absence of form ST-18C with the goods in transit levy of a penalty was automatic--in this case Rs. 56,465. The appellate authority on appeal corrected misinterpretation of the assessing authority in levying penalty without coming to a conclusion that the goods were being transported with the intent to evade tax or that declaration in form ST-18C was supplied on the first opportunity following notice and the transit was good in law. The order of the appellate authority has been upheld by the Tax Board.

2. Heard learned counsel for the petitioner, and perused the orders impugned.

3. From the order of the appellate authority dated August 28, 2000, it is apparent that no intent to evade tax by the assessee was found in the facts of the case, it was admitted by the Revenue that the goods in transit were duly tax-paid, and the declaration form ST-18C was filed by the assessee along with its reply to the show-cause notice. The Tax Board in its order dated August 28, 2000 has held that the presence of all other documents in the course of checking of the vehicle was sufficient to prove that goods in transit were duly tax-paid, and thus no matter what intent to evade tax was absent. It was further held that on the mere unavailability of declaration form ST-18C along with other documents in the first instance a penalty u/s 78(5) of the 1994 Act was mechanically applied overlooking the subsequent furnishing of the form in issue along with the reply to show-cause notice. The Tax Board relied upon the judgment of the honourable Supreme Court in State of Rajasthan and Another Vs. M/s D.P. Metals, , wherein it was held that if the assessee was able to produce the relevant documents such as form ST-18C on receipt of notice, it would be sufficient compliance of law and no penalty can be imposed. As such the Tax Board upheld the order of the appellate authority whereby it set aside the order of penalty imposed upon the assessee u/s 78(5) of the 1994 Act.

4. Having heard learned counsel for the petitioner, and perused the material available on record, I am of the considered view that there was no mens rea of the assessee to evade tax, and the present case is fully covered by the judgment of the honourable Supreme Court in State of Rajasthan and Another Vs. M/s D.P. Metals, , which arise from a case under the Rajasthan sales tax itself. The said judgment has not yet been overruled, or otherwise explained or varied in another judgment by the honourable Supreme Court. In terms of article 141 of the Constitution of India, the said judgment constitutes valid law binding on all courts and authorities within the country.

5. I do not find any error or infirmity in the impugned order dated October 24, 2002, passed by the Rajasthan Tax Board, Ajmer. Accordingly, the revision petition is dismissed.

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