(2013) 10 RAJ CK 0101

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 182 of 2010

Assistant Commercial Tax Officer	APPELLANT
Vs	
Ravi Pulses Pvt. Limited	RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 73 VST 278

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Judgement

Alok Sharma, J.—The matter comes up in sales tax revision u/s 86 of the Rajasthan Sales Tax Act, 1994 (Act of 1994) against the judgment dated June 7, 2007 passed by the Rajasthan Tax Board, Ajmer, in Appeal No. 203/2006. Heard the counsel for the petitioner.

2. The Rajasthan Tax Board, Ajmer, has upheld the finding of the Deputy Commissioner (Appeals), Commercial Taxes Department, under its order dated May 27, 2005 absolving the respondent-assessee from penalty u/s 78(5) of the Act of 1994 on the ground that the owner of the goods in transit could not have been visited with penalty u/s 78(5) of the Act of 1994 as the event pertained to January 8, 2001, while the notification dated March 22, 2002 amending section 78(5) of the Act of 1994 vide Act No. 7 of 2002, making the owner of the goods liable to penalty, came into force on March 22, 2002.

3. Counsel for the petitioner has stated that the view of the Rajasthan Tax Board upholding the judgment dated May 27, 2005 passed by the Deputy Commissioner (Appeals) is in the cross-hairs of the judgment of the honourable Supreme Court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., where the honourable Supreme Court has held the notification dated March 22, 2002 amending section 78(5) of the Act of 1994 was clarificatory and therefore, retrospective in nature. She submits that in this view of the matter any breach of law in respect of the transit of goods on January 8, 2001 would be covered by the said notification and contravention of section

78(2) of the Act of 1994 visit the owner of the goods in transit with the statutory penalty u/s 78(5) of the Act of 1994. Counsel has however being fair to point out the error in the order of the Rajasthan Tax Board passed on June 7, 2007 upholding the order dated May 27, 2007 passed by the Deputy Commissioner (Appeals), would not affect the absolving of the respondent-assessee from liability u/s 78(5) of the Act of 1994 in view of the fact that the order of the assessing officer passed on January 10, 2001 records the factum of Form No. ST-18A bearing No. 6718/16 having been supplied to the Department on issue of show-cause notice by the assessing officer finding in the first instance that the goods in transit on January 8, 2001 were not accompanied by the said form. For this reference can be made to the judgment of the honourable Supreme Court in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, In view of the submissions made, even while dismissing the sales tax revision it is clarified that the order of the Rajasthan Tax Board passed on June 7, 2007 upholding the order dated May 27, 2005 passed by the Deputy Commissioner (Appeals) is not sustainable in view of the judgment of the honourable Supreme Court delivered in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., However, from the facts on record Form No. ST-18A bearing No. 6718/16 having been supplied by the respondent-assessee along with reply to the show-cause notice, the respondent-assessee is held not liable to pay any penalty u/s 78(5) of the Act of 1994 in view of the judgment of the honourable Supreme Court in the case of State of Rajasthan and Another Vs. M/s D.P. Metals,

