(2011) 08 RAJ CK 0066

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 265 of 2011

Assistant Commercial Tax Officer APPELLANT

Vs

Umesh Pal and Another RESPONDENT

Date of Decision : 04-08-2011

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

Citation : (2013) 57 VST 299

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the Petitioner.

2. Assessing Officer vide its order dated 03.06.2004, levied penalty u/s 78(10)(a) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as ''the Act of 1994''), which was set aside by the Deputy Commissioner(Appeals) on an appeal filed by the Assessee vide order dated 31.12.2004. Being aggrieved with the same, Department filed an appeal before the Rajasthan Tax Board, which was dismissed vide order dated 01.10.2007. Hence, this revision petition has been preferred on behalf of the Department.

3. Submission of the learned counsel for Petitioner is that although all the relevant documents including Form ST 18-A were available and produced 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 in levying penalty by the Assessing Officer. He, therefore, contended that 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 the learned counsel for Petitioner in the light of reasons assigned by both the appellate authorities for setting aside the penalty order passed by the assessing officer.

5. 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 SB STR No. 265/2011 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. Division Bench of this Court in State of Rajasthan and Anr. 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. 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.

8. No question of law is involved in this revision petition and the same is, accordingly, dismissed in limine.

