(2014) 02 RAJ CK 0142

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 362 of 2011

Assistant Commercial Tax Officer, Flying Squad — APPELLANT

Vs

Mohan Lal and Company — RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 74 VST 478

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Tanvi Sahay for R.B. Mathur, Advocate for the Appellant

Judgement

Bela M. Trivedi, J.—The present sales tax revision petition has been filed by the petitioner-Department under section 86 of the Rajasthan Sales Tax Act, 1994, against the order dated January 28, 2003 passed by the Member, Rajasthan Tax Board, Ajmer (hereinafter referred to as "the Board") in Appeal No. 1465/2000, whereby the Board has dismissed the appeal filed by the petitioner-appellant against the order dated June 7, 2000 passed by the Deputy Commissioner (Appeals). The short facts giving rise to the present petition are that the vehicle bearing No. RJ-13G-3155 carrying goods was checked on November 1, 1999, and it was found that the other documents were there but the declaration form ST 18A was not found, and therefore, there was contravention of section 78(2) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the said Act"), read with rule 53 of the RST Rules (hereinafter referred to as "the said Rules"). The assessing authority, therefore, after issuing the show-cause notice levied penalty under section 78(5) of the said Act vide the order dated November 3, 1999, against which the respondent-assessee had filed the appeal before the Deputy Commissioner (Appeals), which appeal was allowed by the appellate authority vide the order dated June 7, 2000. Being aggrieved by the same, the petitioner-Department had preferred the appeal before the Board, which has been dismissed by the Board vide the impugned order.

2. It has been submitted by the learned counsel Ms. Tanvi Sahay appearing for

the learned counsel Mr. R.B. Mathur, for the petitioner that since the necessary declaration form ST 18A was not found filled in ink, it could not be said that there was due compliance of section 78(2) of the said Act read with rule 53 of the said Rules. According to her, there being non-compliance of the statutory provisions, the assessing authority had rightly levied penalty under section 78(5) of the said Act.

3. The court does not find any substance in the present petition. It is not disputed that when the vehicle was checked, the person-in charge of the goods had produced all the necessary documents. It appears that the respondent had also produced the declaration form ST 18A, along with his reply. It was not the case of the petitioner that any of the said documents were found to be false or bogus in the inquiry. As held by the apex court in case of State of Rajasthan and Another Vs. M/s D.P. Metals, , the penalty under section 78(5) is leviable under two circumstances, firstly if there is non-compliance with section 78(2)(a), i.e., not carrying the documents mentioned in that clause or, secondly, if false or forged documents or declaration is submitted. In the instant case, the documents were submitted, and the same have not been found to be false or forged one. Therefore, the penalty under section 78(5) of the said could not be levied. In view of the aforesaid legal position, the findings arrived at by the appellate authority as well as by the Board, could not be said to be erroneous. In that view of the matter, the petition being devoid of merits, is dismissed.

