(2010) 11 RAJ CK 0016

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 66 of 2004

Assistant Commercial Taxes Officer — APPELLANT

Vs

Arham Spinning Mills — RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(2), 78(5)

Citation : (2011) 41 VST 495

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the parties.

2. Briefly stated the facts of the case are that at the time of checking of vehicle in dispute, Declaration Form ST-18A was not available with in-charge of the vehicle along with other relevant documents. The Assessing Officer was of the view that Declaration Form ST-18A should have been accompanied with the goods, therefore, penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (for short ''the Act'') is attracted, therefore, he issued a notice to show cause as to why penalty u/s 78(5) of the Act may not be levied in the matter.

3. The Respondent submitted his reply to show cause notice that goods in question were not notified goods, therefore, there was no requirement of Declaration Form ST-18A as per rules, however, he furnished fresh Declaration Form along with reply to notice to show cause also.

4. Learned Assessing Officer was of the view that since Declaration Form should have been accompanied with the goods and the same was not produced at the time of checking of the vehicle, therefore, penalty is leviable. Consequently, he levied penalty of Rs. 65,146/- vide order dated 28.04.2000 u/s 78(5) of the Act.

5. Being aggrieved with the same, the Respondent preferred an appeal, which

was allowed by the Deputy Commissioner(Appeals) vide order dated 25.09.2002. Being aggrieved with the same, the Petitioner preferred an appeal before the Rajasthan Tax Board but the same was dismissed vide order dated 31.12.2003, which is under challenge in this revision petition preferred on behalf of the Petitioner.

6. Submission of learned Counsel for Petitioner is that Declaration Form should have been accompanied with the vehicle itself, but in the present case it was not accompanied, therefore, penalty was rightly levied and the Deputy Commissioner(Appeals) as well as Rajasthan Tax Board both committed illegality in setting aside the penalty order, therefore, the revision petition be allowed.

7. However, learned Counsel for Petitioner admitted that Declaration Form ST-18A was produced by the Respondent before the Assessing Officer along with his reply to show cause notice.

8. Submission of learned Counsel for Respondent is that although the goods in question were not notified goods, therefore, there was no need of any Declaration Form, but so far as present case is concerned, it is an admitted position that Declaration Form ST-18A was produced by the Respondent before the Assessing Officer along with reply to show cause notice, therefore, there was sufficient compliance of provisions of Sections 78(2) and 78(5) of the Act. Therefore, the Deputy Commissioner(Appeals) as well as Rajasthan Tax Board were right in setting aside the penalty order passed by the Assessing Officer. He contended that in the facts and circumstances of the case, this is not a fit case for interference in the orders passed by both the Appellate Authorities in this revision petition.

9. I have considered the submissions of learned Counsel for the parties.

10. Hon''ble the Apex Court in State of Rajasthan and Another Vs. M/s D.P. Metals, , considered the provisions of Sections 78(2) and 78(5) of the Act of 1994 and in para 32 held that

If by mistake some of the documents are not readily available at the time of checking, principles of natural justice may require some opportunity being given to produce the same.

11. The Assessing Officer issued a notice to show cause to the Respondent and in response thereto, the Respondent in addition to his other plea, also submitted a Declaration Form. This fact has not been disputed by the learned Counsel for Petitioner also.

12. Since required Declaration Form had already been produced before the Assessing Officer, therefore, there was sufficient compliance of provisions of Section 78(2) and 78(5) of the Act and also the judgment of Hon''ble Apex Court in State of Rajasthan and Anr. v. D.P. Metals (supra).

13. In these circumstances, I find that the present case is fully covered by the

judgment of Hon''ble Apex Court in the case of D.P. Metals(supra) and I do not find any justified reason to interfere in the orders passed by the Deputy Commissioner(Appeals) as well as Rajasthan Tax Board.

14. In view of above discussions, I do not find any merit in this revision petition and the same is, accordingly, dismissed with no order as to costs.

