(2010) 11 RAJ CK 0099

In the Rajasthan High Court

Case No : Sales Tax Revision No. 165 of 2010

Assistant Commercial Taxes Officer — APPELLANT

Vs

Arvind Kumar — RESPONDENT

Date of Decision : 22-11-2010

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

Citation : (2010) 11 RAJ CK 0099

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. On 14.10.2003, Vehicle No. RJ-32G-0617 was checked by assessing officer and on production of documents it was found that seal of check post of Commercial Taxes Department of the State of Rajasthan was not there on the documents. Assessing officer issued a notice u/s 78(2)(b) of the Rajasthan Sales Tax Act, 1994(hereinafter referred to as ''the Act of 1994'') and being not satisfied with the reply filed by the Assessee, imposed a penalty u/s 78(10A) of the Act of 1994 vide order dated 17.10.2003.

3. Being aggrieved with the same, an appeal was preferred by Assessee, which was allowed by the Deputy Commissioner(Appeals) vide order dated 20.03.2008. Order of Deputy Commissioner (Appeals) was upheld by Rajasthan Tax Board, while dismissing the appeal of the Department vide judgment dated 21.12.2009, which is under challenge in this revision petition preferred on behalf of the department.

4. Submission of learned Counsel for the Petitioner is that since seal of check post of Commercial Taxes Department of the State of Rajasthan was not available on the documents, and penalty order u/s 78(10A) of the Act of 1994 was rightly passed by the assessing officer, which should not have been

interferred by both the appellate authorities, therefore, orders passed by both the appellate authorities may be set aside and penalty order passed by assessing officer may be restored.

5. I have considered the submissions of learned Counsel for the Petitioner in the light of reasons assigned by both the appellate authorities for setting aside the penalty order. Both the appellate authorities have recorded a finding that all the required documents were available at the time of checking of vehicle/goods, therefore, willful intention to evade tax on the part of the Assessee cannot be inferred. Learned Counsel for the Petitioner does not dispute this factual aspect that all required documents, as per provisions of Section 78 (2) (b) of the Act of 1994, were available with the vehicle in-charge at the time of checking of vehicle/ goods.

6. Rajasthan Tax Board in its judgment has relied upon the judgment passed by Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal reported in (2003) 6 Tax (84) wherein Division Bench of this Court took a view that provisions of Section 78(10A) of the Act of 1994 are not mandatory and they are directory in nature and further that if documents were available at the time checking of the vehicle then intention to evade tax can not be inferred.

7. In my view, the orders passed by both the appellate authorities are correct and they are based on judgment delivered by Division Bench of this Court. The present case is fully covered by above-referred judgment and the same do not call for any interference by this Court.

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