(2004) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 823 of 2002

Assistant Commercial Taxes Officer APPELLANT

Vs

J.P. Singh and Sons RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(2), 78(5), 84

Citation : (2006) 146 STC 382 : (2005) WLC 345

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vidhya Bora, Assitant Government Advocate, for the Appellant; Sanjeev Johari, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This revision petition has been filed by the petitioner-Assistant Commercial Taxes Officer against the judgment and order dated February 6, 2002 (annexure 3) passed by the Rajasthan Tax Board, Ajmer, in Appeal No. 664/98 by which the appeal of the petitioner was dismissed.

2. It arises in the following circumstances:

On August 28, 1997, the vehicle No. PB-03D-1623 belonging to the respondent, which was carrying goods, was intercepted and checked by the petitioner-Assistant Commercial Taxes Officer and during checking, it was found that the declaration form ST-18A was time-barred as it was issued on September 19, 1994 and its validity was for a period of two years, therefore, after September 18, 1996, it became time-barred. Since the goods in transit were not accompanied with valid declaration form ST-18A, therefore, a notice u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act of 1994") for violation of the provisions of Section 78(2) of the Act of 1994 was issued by the assessing authority to the respondent-dealer as to why penalty be not imposed.

A reply to the said notice was filed by the respondent stating, inter alia, that because of ignorance the declaration form ST-18A was not got renewed and it was further alleged by the respondent that he had no mala fide intention. It was further averred that after that date, the declaration form ST-18A was got renewed and along with the reply, a declaration form ST-18A with the extended time-limit was filed by the respondent.

After examining the matter, the assessing authority came to the conclusion that the respondent was guilty of violating the provisions of Section 78(2) of the Act of 1994 and consequently, the assessing authority through order dated August 29, 1997 (annexure 1) imposed the penalty of Rs. 19,800 on the respondent-dealer.

Aggrieved from the said order dated August 29, 1997 (annexure 1), the respondent-dealer preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner, u/s 84 of the Act of 1994 and through judgment dated November 19, 1997 (annexure 2), the Deputy Commissioner (Appeals) allowed the appeal of the respondent and set aside the order of the assessing authority dated August 29, 1997 (annexure 1) holding, inter alia, that penalty cannot be imposed merely on the ground that declaration form ST-18A was time-barred.

Aggrieved from the said judgment dated November 19, 1997 (annexure 2), the petitioner preferred second appeal before the Rajasthan Tax Board, Ajmer, and the Rajasthan Tax Board, Ajmer, through impugned judgment dated February 6, 2002 (annexure 3) dismissed the appeal of the petitioner and affirmed the findings recorded by the learned fist appellate authority through judgment dated November 19, 1997 (annexure 2). Hence, this revision petition.

3. On May 13, 2004, this Court, after hearing both the parties, framed the following two substantial questions of law:

(i) Whether the time-barred declaration form ST-18A carried along with the goods in transit itself attracts the provisions of penalty u/s 78(5) of the Act of 1994 for violation of the provisions of Section 78(2)(a) of the Act of 1994 ?

(ii) Whether the offence u/s 78(5) completes the moment the goods in movement are found accompanied with the time-barred declaration form ST-18 or the dealer will come out from the rigour of the provisions of Section 78(5) even if he produces requisite valid documents at the later stage ?

4. In this case, there is no dispute on the point that when the vehicle in question carrying the goods of the respondent was checked by the petitioner on August 28, 1997, the declaration form ST-18A was time-barred and there is also no dispute on the point that later on, the declaration form ST-18A was got renewed by the respondent.

5. The main case as put forward by the learned Counsel for the petitioner is that in cases when the declaration form ST-18A is found time-barred, the provisions

of penalty embodied in Section 78(5) of the Act of 1994 for violation of the provisions of Section 78(2)(a) of A the Act of 1994 are automatically attracted and therefore, because of this fact, the impugned judgments annexure 2 dated November 19, 1997 and annexure 3 dated February 6, 2002 of the first appellate authority [Deputy Commissioner (Appeals)] and second appellate authority (Rajasthan Tax Board, Ajmer) respectively cannot be sustained and liable to be quashed and set aside.

6. On the contrary, the learned Counsel appearing for the respondent placed reliance on the decision of this Court in Assistant Commercial Taxes Officer, Jodhpur v. Mahaveer Chand Jain & Company [2000] 120 STC 212 RAJ where it was held that on the expiry c date, the form ST-18A does not become non est and the very same form can be revalidated and given life for a further period by the concerned officer.

7. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent and gone through the entire materials available on record.

8. This Court in the case of Assistant Commercial Taxes Officer Vs. Mahaveer Chand Jain and Company, held that on the expiry date, the form ST-18A does not become non est but very same form can be validated and given life for a further period by the concerned officer. In that case, this Court further held that the Deputy Commissioner (Appeals) as well as the Tax Board were justified in drawing conclusion about want of mens rea to evade or avoid payment of tax on the part of the respondent-dealer and in not sustaining the penalty levied by the assessing officer.

9. In view of the law laid down by this Court in the case of Assistant Commercial Taxes Officer Vs. Mahaveer Chand Jain and Company, the aforesaid substantial questions of law are answered in favour of the respondent- dealer and against the revenue.

10. Thus, there is no force in this revision petition and the same is liable to be dismissed.

Accordingly, this revision petition filed by the petitioner-Assistant Commercial Taxes Officer is dismissed. No order as to costs.

