(2011) 12 RAJ CK 0018

In the Rajasthan High Court

Case No : Sales Tax Revision No. 118 of 2011

Assistant Commercial Taxes Officer APPELLANT

Vs

Mustaq RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 84

Citation : (2013) 57 VST 478

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Amit Ratnawat, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This revision petition u/s 84 of the Rajasthan Value Added Tax Act, 2003 (hereinafter, "the Act of 2003") read with section 86 of the Rajasthan Sales Tax Act, 1994 (for short, "the Act of 1994") arises from the order dated October 12, 2010 passed by the Rajasthan Tax Board, whereby the Tax Board has upheld the order dated July 10, 2006 passed by the Deputy Commissioner (Appeals), 1st, Jaipur setting aside the levy of tax, surcharge and penalty by the assessing officer on the respondent-assessee Under his order dated September 18, 2003. The facts of the case are that on information received, a vehicle bearing No. HR-55A/8966 was detained by the sales tax authorities at Ramgarh Police Station in District Alwar of the State of Rajasthan. Vehicle was checked and the driver submitted the requisite documents (photo copies) which however did not have seal of any check-post lying on the way in the State of Rajasthan. The driver is stated to have admitted that he had not got the vehicle checked on any check-post. In these circumstances, a show-cause notice u/s 78(2)(a),(b),(4),(5),(10A) and 78(11) of the Act of 1994 was issued to the driver of the vehicle as it was a prima facie case of violation of section 78(2)(b) of the Act of 1994 according to the assessing officer.

2. On proceedings taken, the assessing officer imposed a penalty u/s 78(10A) of

the Act of 1994 on the driver on September 18, 2003. The assessee?s appeal against the order imposing penalty was allowed by the Deputy Commissioner (Appeals), 1st, Jaipur, inter alia, holding that in simultaneous proceedings in respect of the same incident, penalty on the respondent-assessee had been set aside with reference to section 78(5) of the Act of 1994 and, therefore, there was no occasion for levy of penalty u/s 78(10A) of the Act of 1994 on the respondent-assessee. The order of the appellate authority was taken in further appeal by the Revenue to the Rajasthan Tax Board, which vide order dated November 12, 2010, has upheld the said order.

3. I find substance in the submission of the counsel for the petitioner that mere setting aside of the penalty u/s 78(5) of the Act of 1994 would not entail an automatic setting aside of penalty u/s 78(10A) of the Act of 1994 in view of the fact that the two penalties operate in different fact-situations. The submission of the counsel is even though valid on this score, is of no avail for the success of this revision petition, inasmuch as the Rajasthan Tax Board has addressed the issue independently of the reasonings of the appellate authority. It has been found as a matter of fact from the record of the case by the Rajasthan Tax Board that all requisite documents mandatorily required u/s 78(2)(a) of the Act of 1994 in accompaniment of the goods in transit albeit, they were photo copies for the reason that the originals of the said documents had been seized by the Police at Ramgarh Police Station, District Alwar in Rajasthan. The Rajasthan Tax Board has further held that no inquiry was undertaken by the assessing officer with regard to the photo copies of the documents and there was no disbarment in law from furnishing the photo copies of the requisite documents when the original were not available more so when it was also not disputed before the authorities below that the originals were seized by the police at Ramgarh Police Station. No inquiry was held to establish the alleged falsity of the documents in issue. In this view of the matter, the Tax Board concluded that the goods under transit were under a valid and authentic transaction and there was nothing illegal about the same. Further in any view of the matter, merely because the seal of the check-post was not affixed on the documents in issue, it was not sufficient to warrant levy of penalty u/s 78(10A) of the Act of 1994 as held by the Division Bench of this court in the case of State of Rajasthan v. Tajiander Pal reported in [2003] 6 Tax Update, Part 3, Page 84.

4. Having considered the reasonings of the Rajasthan Tax Board as also the facts of the case, I am satisfied that no question of law for determination and adjudication of this court is made out in the facts of the case. The legal position in an identical fact-situation has already been enunciated by this court in Tajiander Pal [2003] 6 Tax Update Part 3, Page 84.

5. The revision petition has no force. Dismissed as such. The stay application also stands dismissed.

