(1988) 07 RAJ CK 0017

In the Rajasthan High Court

Case No : Sales Tax Revision No. 92 of 1986

Assistant Commercial Taxes Officer — APPELLANT

Vs

Rajasthan Marbles — RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Rajasthan Sales Tax Act, 1954 — Section 11B, 7AA

Citation : (1991) 81 STC 175

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; N.N. Mathur, for the Respondent

Judgement

Milap Chandra, J.—This revision petition has been filed u/s 15(2) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act") against the order of the Rajasthan Sales Tax Tribunal, Ajmer, dated 13th August, 1985, by which it directed for the refund of the amount, if deposited. The facts of the case giving rise to this revision may be summarised thus :

2. The assessee-non-petitioner effected sales during the course of inter-State trade and commerce during the accounting year 1971-72. The quarterly returns were not filed and the amounts of tax were also not deposited in time. The assessing authority imposed penalty of Rs. 525.44 u/s 7-A A of the Act and levied interest of Rs. 1,187.85 u/s 11-B of the Act read with Section 9 of the Central Sales Tax Act. The assessee preferred an appeal before the Deputy Commissioner (Appeals), Jodhpur, who allowed the appeal and set aside the penalty and interest The department filed Revision No. 114/82 before the Revenue Board, Ajmer, only against the order setting aside the levy of the said interest. On the establishment of the Rajasthan Sales Tax Tribunal, Ajmer, it was transferred to it for disposal u/s 13 of the Rajasthan Sales Tax (Amendment) Act, 1984. After hearing the parties, the Tribunal held that interest u/s 11-B was rightly imposed by the assessing authority and accordingly allowed the appeal of

the department. While accepting the appeal, it was also ordered that the amount, if deposited, would be refunded. This part of the order has been challenged in this revision.

3. The learned counsel for the petitioner has urged that when the appeal was allowed and the imposition of interest was confirmed by the learned Tribunal, there was no question of the refund of any amount.

4. The learned counsel for the assessee could not support the order of the refund of the amount.

5. Admittedly, the learned Tribunal allowed the appeal of the department and confirmed the imposition of the interest u/s 11-B of the Act read with Section 9(2) of the Central Sales Tax Act. As such there was no question of the refund of the amount of interest, if deposited. It appears that the learned Tribunal passed the order for the refund of the amount of penalty for which no appeal was filed by the department.

6. The amount of interest is not refundable. The amount of penalty is refundable.

7. Consequently, the revision petition is disposed of with the aforesaid observations.