(2010) 11 RAJ CK 0057

In the Rajasthan High Court

Case No : Sales Tax Revision No. 24 of 2010

Assistant Commercial Taxes Officer APPELLANT

Vs

Shri Raj Kumar RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(10A), 78(2)

Citation : (2010) 11 RAJ CK 0057

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. Assessing officer vide its order dated 17.11.2005 levied penalty u/s 78(10A) of the Rajasthan Sales Tax Act, 1994(hereinafter referred to as ''the Act of 1994'') against the Assessee. Said penalty order was set aside by Deputy Commissioner (Appeals) vide order dated 11.04.2007 in an appeal preferred on behalf of the Assessee. Order of Deputy Commissioner (Appeals) was upheld by Rajasthan Tax Board while dismissing the appeal of the Petitioner/assessing officer vide judgment dated 15.09.2009, which is under challenge in this revision petition preferred on behalf of the department.

3. Submission of learned Counsel for the Petitioner is that although all the relevant documents were available and produced before asessing officer at the time of checking of vehicle/goods, but there was no seal of check post of Commercial Taxes Department of the State of Rajasthan on the documents, therefore, penalty order was rightly passed by the assessing officer and the same should not have been set aside by both the appellate authorities.

4. I have considered the submissions of learned Counsel for the Petitioner in the light of reasons assigned by Deputy Commissioner (Appeals) as well as Rajasthan Tax Board for settng aside the penalty order.

5. Learned Counsel for the Petitioner does not dispute that all the required documents were available at the time of checking of the vehicle and no tax has been evaded in the present matter. Penalty has been levied only on the ground that that seal of check post was not available on the documents, which is not the requirement of Sections 78(2)(b) or 78(10A) of the Act of 1994.

6. Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal, reported in (2003) 6 Tax 84 considered and interpreted provisions of Section 78(2)(b) of the Act of 1994 and held that these provisions are not mandatory and they are directory in nature. Division Bench further held that if all the documents are available at the time of checking of goods/vehicle and no tax has been evaded/avoided, then mens-rea on the part of the Assessee cannot be inferred. Rajasthan Tax Board has also relied upon above- referred jdugment delivered by Division Bench of this Court in addition to other judgments.

7. In these circumstances, I find that present case is fully covered by judgment of Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal(supra).

8. In addition to above it is also relevant to mention that goods in the present case were passing through the State only. The goods were coming from other State and were going to other State, therefore, there is no question of evasion of any tax. This fact has been recorded by Rajasthan Tax Board, which has not been said to be factually incorrect by learned Counsel for the Petitioner also.

9. In these circumstances, it is clear that this was not a fit case for levying penalty, as there was no evasion of tax in the facts and circumstances of the present case.

10. In view of above discussions, I do not find any merit in this revision petition. No question of law is involved in this revision petition and the same is, accordingly, dismissed in limine.