(2010) 11 RAJ CK 0085

In the Rajasthan High Court

Case No : Sales Tax Revision No. 184 of 2010

Assistant Commercial Taxes Officer APPELLANT

Vs

Shri Rishi Garg RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(10A)
Rajasthan Value Added Tax Act, 2003 — Section 76(11), 76(2)

Citation : (2012) 51 VST 104

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. Petitioner/assessing officer vide its order dated 31.10.2006 levied penalty u/s 76(11) of the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as ''the Act of 2003'') for violation of provisions of Section 76(2)(a) of the Act of 2003. Penalty order passed by the assessing officer was set aside by Deputy Commissioner (Appeals) vide order dated 13.03.2007, while accepting the appeal of the Assessee. Rajasthan Tax Board upheld the order passed by the Deputy Commissioner (Appeals) and dismissed the appeal of the Petitioner 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 required documents were available with the in-charge of the vehicle at the time of checking of vehicle/goods and required tax had already been paid, but seal of check post of Commercial Taxes Department of State of Rajasthan was not there on the documents, therefore, penalty order was rightly passed by the assessing officer, which 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 both the appellate authorities for setting aside penalty order passed by the assessing officer.

5. It is relevant to mention that provisions of Section 76(11) of the Act of 2003 are peri materia with the earlier provisions of Section 78(10A) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as ''the Act of 1994'').

6. Learned Counsel for the Petitioner does not dispute that all the required documents were available with in-charge of the vehicle at the time of checking of vehicle/goods and required tax had already been paid in the matter.

7. Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal, reported in (2003) 6 Tax 84 considered the provisions of Section 78(10A) of the Act of 1994 and held that these provisions are not mandatory and only directory in nature. Division Bench further held that if all the required documents were available at the time of checking of the vehicle/goods, then intention to evade or avoid tax cannot be inferred.

8. Rajasthan Tax Board relied upon the above-referred judgment delivered by Division Bench of this Court and upheld the order passed by the Deputy Commissioner (Appeals), whereby penalty order was set aside. Present case is fully covered by the above-referred judgment of Division Bench of this Court.

9. In these circumstances, I do not find any illegality in both the impugned orders passed by both the appellate authorities and the same do not call for any interference by this Court in this Revision petition.

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