(2010) 11 RAJ CK 0061

In the Rajasthan High Court

Case No : Sales Tax Revision No. 144 of 2010

Assistant Commercial Taxes Officer — APPELLANT

Vs

Shri Sukhvinder Singh. — RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(10A), 78(2), 78(3), 78(5), 78(8)
Rajasthan Value Added Tax Act, 2003 — Section 76(11)

Citation : (2010) 11 RAJ CK 0061

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. The vehicle in dispute was checked by assessing officer and on production of documents by in-charge of the vehicle, it was found that seal of check post of Commercial Taxes Department of the State of Rajasthan was not there, therefore, assessing officer issued a notice u/s 76(11) of the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as ''the Act of 2003'') to impose penalty Assessee filed reply to show cause notice wherein he stated that all the relevant documents were available with the vehicle in- charge, therefore, there was no intention to evade tax. However, assessing officer was of the view that putting a seal on the documents is necessary, therefore, there is breach of Section 76(11) of the Act of 2003 and as such, penalty is leviable and consequently, he levied a penalty of Rs. 70,000/- vide order dated 25.01.2008 and issued a demand notice.

3. Said order was challenged by Assessee by way of appeal before Deputy Commissioner (Appeals), who vide order dated 15.04.2008 allowed the appeal and set aside the penalty order. Being aggrieved with the order passed by the Deputy Commissioner(Appeals), Revenue preferred an appeal before Rajasthan Tax Board, but without success. Judgment dated 10.11.2009 passed by

Rajasthan Tax Board is under challenge in this revision petition filed on beahalf of the revenue.

4. Submission of learned Counsel for the Petitioner is that since seal of check post of Commercial Taxes Department was not available on the relevant documents at the time of checking of goods, therefore, it should have been presumed that vehicle was not stopped at check post and Assessee violated the provisions of Section 76(11) of the Act of 2003, assessing officer rightly imposed a penalty, which has wrongly been set aside by the Deputy Commissioner(Appeals) as well as Rajasthan Tax Board, therefore, both the orders passed by both the appellate authorities may be set aside.

5. 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.

6. Learned Counsel for the Petitioner has not disputed that all the relevant documents were available with the vehicle in-charge at the time of its checking and no tax had been evaded by the Assessee. The case of revenue is that at the time of checking of the vehicle and production of the documents, the seal of check post of Rajasthan was not there on the documents, therefore, there is violation of provisions of Section 76(11) of the Act of 2003. It is relevant to mention that Section 76(11) of Act of 2003 is peri-materia with the provisions of Section 78(10A) of the Rajasthan Sales Tax Act, 1994(hereinafter referred to as ''the Act of 1994'').

7. The Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal, reported in (2003) 6 Tax 3 No. 84 considered the provisions of Sections 78(2), (5) and (10A) of the Act of 1994 and affirmed the view of the learned Single Judge by observing, "In that view of the matter, the learned Single Judge was right in coming to the conclusion that no intention to avoid tax can be spelt out from the proceedings of the cases"Division Bench also considered the word "may"used in Sub-Section 10A of Section 78 of the Act of 1994 and held that it is directory and further that all requisite documents were present when the officer authorised under Sub-section (3) required the person carrying such goods to produce such documents and the vehicle was stopped when required to do so. In fact no violation of Sub-section (5) or Sub-section (8) have been found by the assessing authorities also.

8. Since the learned Single Judge as well as learned Division Bench of this Court have already considered the peri-materia provisions, i.e. Section 78(10A) of the Act of 1994 and took a view that if all required documents were available at the time of checking of the vehicle/goods, then intention to avoid the tax cannot be inferred and this being discretionary provision, penalty is not leviable automatically.

9. In the case in hand also, there is no dispute that all the required documents were available at the time of checking of vehicle/goods, therefore, it cannot be

presumed that there was any intention on the part of the Assessee to evade the tax. In these circumstances, the present case is fully covered by the aforesaid judgment of Division Bench of this Court.

10. There is no merit in this revision petition and the same is dismissed in limine.

