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(1985) 10 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Sales Tax Ref. No. 33 of 1980

Assistant Commercial Taxes Officer APPELLANT

Vs

Sukh Deo Gulab Chand RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 16(1)(b), 7(2A)

Citation : (1985) 2 WLN 777

Hon'ble Judges : Shyam Sunder Byas, J;Kishan Mal Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kishan Mal Lodha, J.—The Board of Revenue, Rajasthan (''the Board'') has referred the following question of lav to this Court in pursuance of the directions given by this Court in Commercial Taxes Officer, Pali v. Sukhdeo Gulab Chand D.B. Sales Tax Reference Application No. 75/76, decided on Aug. 23, 1977:

Whether on the facts and in the circumstances of the case, the Board of Revenue was justified in setting aside the order of penalty imposed on the assessee u/s 16(1)(b) (as it then stood) of the Rajasthan Sales Tax Act, 1954 ?

2. The assessee (respondent) is a partnership concern dealing in cereals, pulses, oilseeds etc. and at the relevant time, carried on its business at Jaitaran, district Pali. For the year 1965-66, the assessee filed one consolidated return on January 3, 1966, ending on October 4, 1965, for a gross turnover of Rs. 229793.03 and taxable turnover was shown nil. A revised return for the entire period was later on filed on January 25, 1967 for increased gross turnover, i.e. 2,53,077.40. In that return also, the taxable turnover was shown as nil. The assessee had deposited a sum of Rs. 430.66 as tax on March 26, 1965 and January 13, 1966. The Assessing Authority, by its order dated Feb. 10, 1967, determined the amount of tax due from the assessee at Rs. 753.59 consisting of purchase tax Rs. 632.94 plus sales-tax Rs. 120.65. It found that the balance amount of Rs.

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323.99 was still due for payment. According to the Assessing Authority, the tax was to be paid monthly within 21 days of the close of each month whenever it was due. As the assessee had defaulted in this regard and did not pay full tax, a show cause notice was given to it as to why penalty be not imposed for the same. No satisfactory explanation was given by the assessee. He, therefore, imposed a penalty of Rs. 200/- u/s 16(1)(b) of the Rajasthan Sales Tax Act, 1954 (Act No. XXIX of 1954) (for short ''the Act''). An appeal was filed by the assessee. The Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, by his order dated January 14, 1970, set aside the order of penalty. The Assesssing Authority lodged revision before the Board. A single Member of the Board dismissed the revision by his order dated September 25, 1973, A special appeal was preferred and the Division Bench of the Board rejected the same by its order dated Aug. 27, 1974. An application u/s 15(1) of the Act was filed before the Board for referring the question of law arising out of the order of its Division Bench. The Division Bench declined to make reference by its order dated Aug. 11, 1975 on the ground that there is an authoritative pronouncement of the Supreme Court reported in State of Rajasthan and Others Vs. Ghasilal, and so there was no justification for making a reference. Thereafter an application was filed u/s 15(2)(b) of the Act before this Court. The Court directed the Board to refer the aforesaid question for its opinion.

3. In view of the provision contained in Section 13(11) of the Rajasthan Sales Tax (Amendment) Act, (No. XX of 1984) (for short ''the Amendment Act''), this reference, which was pending on May 1,1985, has been treated as a revision and we propose to dispose it of as such u/s 15 of the Act, as substituted by the Amendment Act.

4. We heard Mr. K.C. Bhandari, learned counsel for the Assessing Authority Mr. Rajesh Balia, Advocate was asked to assist us after the conclusion of the arguments of the learned counsel for the Assessing Authority and before the commencement of the dictation of the order, as nobody has appeared on behalf of the dealer-assessee. We place on record the useful assistance rendered by Mr. Rajesh Balia.

5. The Division Bench of the Board rejected the special appeal endorsing the reasons given by the single Member of the Board, when he dismissed the revision by his order dated September 25,1973. The single Member of the Board relied on State of Rajasthan''s case (1965) 16 STC 318 on the ground that the assessee has not committed breach of Section 16(1)(b) of the Act, as it stood then, for it did not fail to pay the tax after the tax has been determined by the assessment order by the Assessing Authority.

6. The contentions of Mr. Bhandari are:

(1) that Section 16(1)(b) of the Act has been substituted by a new Section wherein the word ''due'' which was present in the original Section 16(1)(b) was deleted w.e.f. May 4, 1964 vide Amendment Act No. XIII of 1964;

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(2) that at the time of the assessment by the Assessing Authority, new Section 16(1)(b) had come into force and since the word ''due'' had been deleted, the decision reported in State of Rajasthan''''s case (1965) 16 STC 318 was not applicable to the facts of the present case; and, (3) that Section 7(2A) of the Act was also not in force at the time the decision in State of Rajasthan''s case (1965) 16 STC 318 was rendered and in these circumstances, the Board committed an error in relying upon it (1).

7. This has necessitated for us to notice the relevant provisions of Sections 7 and 16 of the Act. The provisions of the Act, when the decision in State of Rajasthan''s case (1965) 16 STC 318 was rendered, were these:

Section 7(1)--Every dealer liable to pay tax shall furnish returns of his turnover for the prescribed periods in the prescribed form, in the prescribed manner and within the prescribed time, to the assessing authority;

Provided that the assessing authority may extend the date for the submission of such returns by any dealer or class of dealers by a period not exceeding fifteen days in the aggregate;

(2) Every such return shall be accompanied by a Treasury receipt or receipt of any bank authorised to receive money on behalf of the State Government showing the deposit of the full amount of the tax due on the basis of return in the Government Treasury or bank concerned;

(3) If any dealer discovers any omission, error, or wrong statement in any returns furnished by him under Sub-section (1), he may furnish a revised return in the prescribed manner before the time prescribed for the submission of the next return but not later;

(4) Every deposit of tax made under Sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of the final assessment of tax made for any year u/s 10.

Section 16(1) is as under:

Section 16(1)--If any person

(a) has without reasonable cause failed to get himself registered as required by Sub-section (1) of Section 6 within the time prescribed; or

(b) has without reasonable cause failed to pay the tax due within time allowed; or

(c) has without reasonable cause failed to furnish the return of his turnover, or failed to furnish it within the time allowed; or

The assessing authority may direct that such person shall pay by way of penalty; in the case referred to in clause (a) in addition to the fee payable by him, a sum not exceeding Rs. 50 and in the case referred to in clause (b), in addition to the amount payable by him, a sum not exceeding half of that amount, and that in cases referred to in clause (c) and (d), in addition to the tax payable by him, a

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sum not exceeding half the amount of tax determined; in the case referred to in clause (e), in addition to the tax payable by him a sum not exceeding double the amount of tax, if any, which would have been avoided if the taxable turnover as returned by such person had been accepted as correct turnover, and in cases referred to in clanses (f), (ff) and (g), a sum not exceeding Rs. 100.

During the relevant period, with which, we are concerned, Section 7 was as under ;

7. Submission of returns"--(1) Every registered dealer and such other dealer, as may be required to do so by the assessing authority by notice served in the prescribed manner, shall furnish prescribed returns, for the prescribed periods, in the prescribed manner and within the prescribed time to the assessing authority;

Provided that the assessing authority may extend the date for the submission of such returns by any dealer or class of dealers by a period not exceeding fifteen days in the aggregate.

(2) Every such return shall be accompanied by a Treasury receipt of any bank authorised to receive money on behalf of the "State" Government, showing the deposit of the full amount of tax due on the basis of return in the Government Treasury or bank concerned.

(2A) Not with standing anything contained in Sub-section (2) the State Government may by notification in the Official Gazette require any dealer or class of dealers specified therein, to pay tax at intervals shorter than those prescribed under Sub-section (1). In such cases, the proportionate tax on the basis of the last return shall be deposited at the intervals specified in the said notification in advance of the return. The difference, if any, of the tax payable according to the return and the advance tax paid shall be deposited with the return and the return shall be accompanied by the treasury receipt, or receipts, of any Bank authorised to receive money on behalf of the State Government, for the full amount of tax due shown in the return.

Material part of Section 16 of the Act reads as under:

16. Offences, Penalties and Prosecutions, etc.

(1) If any person

(b) has without reasonable cause failed to pay within the time followed any tax, fee or penalty;

8. In exercise of the powers conferred on it by s. 7(2A), the Government had issued the following Notification:

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the RST Act, 1954, and in supersession of this Department Notification No. F5(40) FDRT/63-1 dated the 3rd May, 1963 (S. No. 58B), the State Govt. hereby directs that in relation to the tax payable upto and for the month of June, 1963 and

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thereafter the class of dealers specified in column No. 1 of the schedule appended hereto shall pay tax at intervals specified in column No. 2 thereof.

SCHEDULE ____

_________________ Every dealer whose turnover for the Monthly within 21 days of the year of accounts relevant to the close of each month of his assessment year, immediately prec- year of account. eding the current assessment year, as assessed or shown in his return, whichever is higher, is Rs. 1,00,000/- or more. ____

_________________________ In exercise of the powers conferred by Sub-section (2A) of Section 7 of the RST Act, 1954 and in supersession of this department notification No. F. 5(AO) FDRT/63 dated the 6th July, 1963 (S. No. 63A), the State Government hereby directs that in relation to the tax payable upto and for the month of November, 1964 and thereafter, the class of dealers specified in column No. 1 of the schedule appended hereto shall pay tax at intervals specified in column No. 2 thereof.

SCHEDULE ____

_________________ Every dealer whose turnover for the Monthly within 21 days of the year of accounts relevant to the close of each month of his assessment year, immediately prec- year of account. eding the current assessment year, as assessed or shown in his return, whichever is higher, is Rs. 50,000/- or more. ____

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Mr. K.C. Bhandari, learned counsel for the ACTO, pressed that the dealer-assessee admittedly, had not deposited the tax in accordance with Section 7(2A) and no cause was shown for not paying the same within the time provided in the Notification, and has, thus, rendered himself liable to penalty u/s 16(1)(b) of the Act.

9. It was held in State of Rajasthan''s case (1965) 16 STC 318 after considering Sections 3, 5, 7 and 17 of the Act and Rule 31 of the Rajasthan Sales Tax Rules, 1955 (for short ''the Rules'') that Section 3 of the Act, which is the charging Section, read with Section 5 creates liability to pay the tax, but till the tax payable is ascertained by the Assessing Authority u/s 10, or by the assessee u/s 7(2), no tax can be said to be due within Section 16(1)(b), for till then here is only a liability to be assessed to tax and so there can be no breach of Section 16(1)(b) of the Act. It was further held that Rule 31 of the Rules comes into the picture only when an assessment has been completed. The single Member of the Board, with whom the Division Bench agreed held that according to the principles laid down in State of Rajasthan''s case (1965) 16 STC 318, in this case, the assessee has not committed breach of Section 16(1)(b) of the Act, for, it cannot be said that the dealer-assessee had failed to deposit the tax within time allowed by the Assessing Authority. In State of Rajasthan''s case (1965) 16 STC 318, as stated above, it was held that there was no breach of Section 16(1) (b) of the Act as no tax can be said to be due until the tax payable is ascertained by the

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Assessing Authority u/s 10 or by the assessee u/s 7(2) of the Act. With the reference to expression ''time allowed'', it was observed as under:

There was some discussion before us as to the meaning of the words "time allowed", but we need not decide in this case whether the words "lime allowed" connote time allowed by an assessing authortiy or time allowed by a provision in the Rules or the Act, all these things, as we are of the view that no tax was due within the terms of Section 16(1)(b) of the Act. Section 3, the charging Section, read with Section 5, makes taxes tax payable, i.e., creates a liability to pay the tax. That is the normal function of a charging Section in a taxing statute. But till the tax payable is ascertained by the assessing authority u/s 10, or by the assessee u/s 7(2), no tax can be said to be due within Section 16(1)(b) of the Act, for till then there is only a liability to be assessed to tax.

In this case, it is not necessary for us to examine the correctness of the order of the Board maintaining the deletion of the penalty imposed u/s 16(1)(b) of the Act, which was done by the Dy. Commissioner in his order dt. Jan. 14, 1970, as otherwise no penalty could be imposed on the assessee. We are of opinion that the dealer-assessee cannot be said to have committed default in complying with Section 7(2A) of the Act. It may be re-called that the assessee had not filed any return as contemplated by Section 7(1) of the Act and therefore, the question of depositing of the amount of tax due on the basis of the return, as envisaged by Section 7(2) did not arise. u/s 7(2A), the assessee is required to deposit the monthly tax on the basis of the last return mentioned in the Notification, in advance of the return and the difference, if any of the tax payable according to the return and the advance tax paid is to be deposited with the return and the return is to be accompanied by the receipt. The notification provided that the tax is to be deposited monthly in accordance with the last return within 21 days of the close of each month of Account.

10. As the returns were not filed, the question of deposit of the tax every month according to the Account does not arise. In this case, one return of turnover for the year ending October 24, 1965 was filed on January 3, 1965 for a gross turnover of Rs. 229793.03 and taxable turnover was shown nil. Thereafter, a revised return was filed on January 25, 1967 for the increased gross turnover. In that also the taxable turnover was shown as nil. So, as per the return, no tax was to be deposited in accordance with Section 7(2A) of the Act. The assessee had deposited an aggregate sum of Rs. 430.66 as tax on March 26, 1965 and Jan. 13, 1966. The Assessing Authority determined the amount of tax due from the assessee firm at Rs. 753.59 (purchase tax Rs. 632.94 plus sales-tax Rs. Rs. 120.65) and held that a balance amount of Rs. 322.99 was still due for payment. The balance due was to be deposited as directed u/s 11 of the Act. This cannot be said to be the amount which was to be deposited within 21 days of the close of each month of account, as envisaged by the notification u/s 7(2A) of the Act, for this cannot be the amount of tax, which was to be paid monthly within 21 days of the close of each month whenever it was due. Thus prior to the

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introduction of Sub-section (2A) in Section 7 of the Act in 1963, the dealers were required to deposit the amounts due along with the quarterly returns. This requirement was subsequently modified and a procedure of monthly deposits was introduced. According to Section 7(2) of the Act, every quarterly return was to be accompanied by a treasury receipt or receipt of any bank authorised to receive money on behalf of the State Govt. showing deposit of the full amount of tax due on the basis of the return in the State Govt. Treasury or bank concerned. Section 7(2A) of the Act is only an enabling provision which authorises the State Government to require any dealer or class of dealers specified in the notification issued under that Sub-section, to deposit tax instalments at shorter intervals than those prescribed u/s 7(1) of the Act. Such instalments are payable in advance of the return. Section 7(2) of the Act, which creates the initial liability for the deposit of tax while filing the quarterly returns refers to ''tax due'' and not ''tax'' only. Section 7(2A) of the Act further permits deposit of the differential amount, if any, between the full amount of tax due shown in the return and the amount of advance tax paid at the time of the filing of the return. Thus, on the facts of this case, it cannot be said that any default was committed by the dealer assessee u/s 7(2A) of the Act and for that reason alone, the penalty imposed by the Assessing Authority cannot be sustained. The Deputy Commissioner was right in quashing the penalty and the Board was right in maintaining the order of the Deputy Commissioner.

11. In view of the conclusion, to which we have arrived at, it is now not necessary to consider the effect of the provisions of Section 7(2A) of the Act on the judgment reported in State of Rajasthan''s case (1965) 16 STC 318.

12. For the aforesaid reasons, the order of the Dy. Commissioner (Appeals) dated January 14, 1970, which was maintained by the Board, is affirmed. The revision has no force and it is dismissed.

13. As nobody has appeared on behalf of the assessee there will be no order as to costs.

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