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(2010) 02 RAJ CK 0147

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 10 of 2010

Assistant Commercial Taxes Officer, Flying Squad APPELLANT

Vs

Khem Chand RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78

Citation : (2011) 44 VST 66

Hon'ble Judges : Jitendra Ray Goyal, J

Bench : Single Bench

Advocate : Brij Sharma on behalf of R.B. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Jitendra Ray Goyal, J.—Heard learned counsel for the petitioner. This revision petition is directed against the order dated July 16, 2009 passed by a learned Single Member of the Rajasthan Tax Board, Ajmer, in Appeal No. 2734 of 2005/ Alwar by which the appeal of the petitioner ACTO (Revenue) has been dismissed.

2. The vehicle bearing No. RJ-02-6158 was stopped on January 15, 2003 in Rajasthan at Saras Chauraha, Bharatpur, by the concerned officer of the Sales Tax Department and on demand the driver produced relevant documents required to accompany the goods in transit u/s 78 of the Rajasthan Sales Tax Act (in short, "the Act") but it was found that the said vehicle was not passing through regular route but was passing through kaccha rasta and the said goods were not got checked at the check post. Therefore, the ACTO imposed the penalty of 50 percent of value of goods but the said penalty was set aside by the Deputy Commissioner (Appeals) vide its judgment dated November 29, 2004 which was confirmed by the Rajasthan Tax Board vide impugned judgment.

3. It was, inter alia, contended by the counsel for the petitioner that it was proved that the driver of the involved vehicle was passing through kaccha route without getting the documents checked at the check-post and thereby he

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violated the provisions of section 78(2)(b) of the Act, therefore, the respondent is liable for penalty of violation of the said provision.

4. I have considered the above submissions, It is not disputed and so also the learned Tax Board found that the driver of the vehicle was carrying on necessary papers and invoices, and therefore there was no intention to avoid or evade the tax, and on account of technical error, it was not appropriate to levy the tax. The Division Bench of this court in the case of State of Rajasthan v. Tajinder Pal reported in Tax Up-Date, Vol. 6, Part 3, Page 84, May 16-31, 2003, held that in sub-section (10A) of section 78 of the Act of 1994, the word "may" has been used enabling levy of penalty. Thus, it is not imperative in all cases to levy the penalty where there is violation of sub-section (10A). It was further observed that it is only in case where there is nexus of any evasion or avoidance of tax with the breach of subsection (10A) that the penalty can be imposed. In the instant case, as has been discussed, the driver of the involved vehicle was carrying all the necessary papers, invoices of the goods, therefore there appears no illegality in this finding of the Tax Board that there was no intention to avoid or evade the tax. In view of the above, I do not find any impropriety or illegality in the impugned judgment. 6 Consequently, this sales tax revision petition along with stay application is dismissed at the admission stage.

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