(2014) 02 RAJ CK 0095

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 398 of 2008

Assistant Commissioner of Commercial Tax APPELLANT

Vs

Mukesh Singh RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Citation : (2014) 76 VST 491

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Tanvi Sahay for R.B. Mathur, Advocate for the Appellant

Judgement

Bela M. Trivedi, J.—The present petition has been filed under section 86 of the Rajasthan Sales Tax Act, 1994, (hereinafter referred to as "the said Act"), challenging the order dated August 2, 2007 passed by the Rajasthan Tax Board, Ajmer (hereinafter referred to as "the Tax Board") in Appeal No. 131 of 2006. It appears that on January 25, 2004, the vehicle bearing No. RJ-05/G-3093 was checked on Bharatpur-Achnera Road, the said vehicle was carrying 20,000 liters refined lube oil, and was being transported from Jaipur to Agra. On being asked, the driver of the vehicle had produced the invoice No. 141 of M/s. Shri Ganpat Lubricants, Jaipur, dated January 25, 2004 and builty No. 617 dated January 25, 2004 of New Bansal Road Lines, Agra and of blank form No. 31 of Uttar Pradesh, Vyapar Kar Department. On further checking, it was found that the vehicle was moving on the road which did not have the check-post. The explanation given by the driver being not found satisfactory, notice under section 78(10A) of the Rajasthan Sales Tax Act was served upon him. The assessing authority vide the order dated February 17, 2004 passed the order imposing penalty under section 78(10A) of the said Act, against which the respondent-assessed had filed the appeal before the Deputy Commissioner (Appeals), who quashed and set aside the said order passed by the assessing authority. Being aggrieved by the said order passed by the appellate authority, the petitioner had preferred an appeal before the Tax Board, which has been dismissed by it vide the impugned order dated August 2, 2007.

2. In the instant case, it is not disputed that the documents produced by the driver of the vehicle were neither found to be incomplete nor forged one. The only contention raised by the learned counsel for the petitioner is that the said documents did not bear any stamp of any check-post. In the opinion of the court, the decision of this court in case of State of Rajasthan v. Tajiander Pal [2003] Tax Up-Date Vol. 6, Part 3, Page 84, clinches the issue involved in the present petition. It has been, inter alia, held therein as under:

"... In the present case also, it is finding that all requisite documents were present when the officer authorized 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. 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. As we have found earlier that no notice to show cause against the breach of sub-section (10A) has been issued nor any ingredient of sub-section (10A) can be spelt out from the show-cause notice for sustaining the penalty after affording an opportunity of hearing. In that respect, therefore, the penalty apparently was not sustainable on the plain reading of the provisions of sub-section (10A) coupled with the show-cause notice which was given to the driver of the vehicle to show cause why the penalty could be imposed.

In view thereof, we are of the opinion that to the extent, the learned single judge found that admittedly, the driver was carrying all necessary papers, invoices and no tax was due makes out a case that the vehicle was carrying the goods along with requisite documents without intention to avoid or evade tax. That being so, the discretion vested in the assessing authority was not liable to be exercised even if there was technical violation of sub-section (10A) to impose the penalty equal to 50 per cent of the value of the goods, though as noticed by us no case of violation of sub-section (10A) was spelt out in notice under section 78. Thus, penalty came to be imposed without affording opportunity to the driver to defend himself. The levy of penalty thus being in breach of requirements of sub-section (10A) and in breach of principles of natural justice, could not have been sustained."

In view of the aforestated legal position, the court does not find any substance in the present petition. The petition being devoid of merits, is dismissed.