(1979) 11 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 829 of 1978

Bhanwar Lal Jain APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 27-11-1979

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 11(3)

Citation : (1980) RLW 241 : (1980) 45 STC 92 : (1979) WLN 701

Hon'ble Judges : C.M. Lodha, C.J;Milap Chand Jain, J

Bench : Division Bench

Advocate : L.R. Mehta, for the Appellant; S.C. Bhandari, for the Respondent

Judgement

C.M. Lodha, C.J.—The facts giving rise to this writ petition lie within a narrow compass. The petitioner carries on the business of manufacturing polythene bags, paper bags, etc., under the name and style of M/s. Oswal Brothers. He is a registered dealer under the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the Act), and also under the Central Sales Tax Act, 1956. The petitioner''s case is that he submitted quarterly returns before the assessing authority, viz., the Commercial Taxes Officer, A-Circle, Jodhpur, for four quarters as mentioned in para No. 5 of the writ petition for the period commencing from 27th October, 1973, to 13th November, 1974. The assessing authority passed the assessment order on 30th November, 1974. Aggrieved by the assessing authority''s order, the assessee filed appeal before the Deputy Commissioner, Commercial Taxes (Appeals), Jodhpur, on 17th December, 1974. He also made an application for stay of recovery of the amount of tax before the Commissioner, Commercial Taxes, on 26th June, 1978. The stay application was partly allowed by the Additional Commissioner, Commercial Taxes, Rajasthan, Jaipur, by his order dated 7th November, 1978 (annexure 7), by which the learned Additional Commissioner stayed the recovery of a part of the tax assessed, viz., Rs. 35,000, out of the total demand for Rs. 73,385.85. The grievance of the petitioner is that even though an opportunity of being heard was granted to the petitioner before passing the impugned order but no reasons have been recorded for rejecting the petitioner''s prayer for stay of recovery of the whole amount of tax.

2. At this stage we may refer to the third proviso to Sub-section (3) of Section 11 of the Act, which reads as under:

Provided also that the Commissioner or the Deputy Commissioner (Administration) shall, before rejecting an application under the first proviso, give the applicant a reasonable opportunity of being heard, and shall also record reasons for such rejection.

3. A bare reading of this proviso makes it abundantly clear that the Commissioner or the Additional Commissioner, as the case may be, must record reasons for rejecting an application for stay of the recovery of the amount of tax. On a perusal of the impugned order (annexure 7), we find that it has been passed on a cyclostyled form. All that has been stated therein is that the authority had looked into the assessment order and the grounds of appeal, as also the stay application, and that he was of the opinion that recovery of Rs. 35,000 out of the total demand of Rs. 73,385.85 be stayed. No reasons whatsoever have been recorded for not staying the recovery of the whole amount of tax. As already stated above, the blanks have been filled in a cyclostyled pro forma (annexure 7). May be that the Additional Commissioner had certain reasons in his mind while allowing the petitioner''s application for stay in part but the mandate of law is that the reasons must be recorded. It was, therefore, obligatory for the Additional Commissioner to record reasons for rejecting the petitioner''s prayer for stay of recovery of the whole amount of the tax.

4. We may state, here, that besides challenging the validity of the stay order (annexure 7), the petitioner has also challenged the assessment order dated 30th November, 1974 (annexure 1), on a number of grounds. However, the petitioner has already filed an appeal against that order, and the appeal is pending before the Deputy Commissioner, Commercial Taxes (Appeals). Thus, when the petitioner has an alternative remedy by way of appeal and has availed it, we are not prepared to go into the merits of the assessment order. Suffice it to say that it will be open to the petitioner to challenge the assessment order before the appellate authority.

5. Another contention raised on behalf of the petitioner is that the Additional Commissioner committed a patent error of law in imposing a condition on the petitioner while staying the recovery of a part of the amount of the tax assessed at Rs. 35,000, that the assessee would deposit the rest of the amount, for which no stay had been granted, within 15 days of the order. However, since no reasons have been recorded for refusing to stay the recovery of the whole of the amount, the case must go back to the Additional Commissioner for passing a fresh order in accordance with law. In this view of the matter, we do not consider it necessary to examine the point whether such a condition can be imposed or not

and leave it to the Additional Commissioner to decide the stay matter afresh.

6. Accordingly, we allow this application in part, set aside the impugned order dated 7th November, 1978 (annexure 7), and direct the Additional Commissioner, Commercial Taxes, Rajasthan, Jaipur, to pass a fresh order on the stay application filed by the petitioner in accordance with law. In the circumstances of the case, we make no order as to costs.

7. Learned counsel for the petitioner submits that a suitable direction may be issued for stay of the recovery of the amount of tax till the stay application is decided by the Additional Commissioner. The contention on behalf of the department is that if the petitioner approaches the Additional Commissioner for interim stay, the Additional Commissioner would certainly consider the matter on merits. Having regard to all the circumstances, we hereby direct that the Additional Commissioner may dispose of the stay application afresh in accordance with law within three months from today. Learned counsel for the parties are agreed that the stay application may be fixed up for hearing before the Additional Commissioner on 15th January, 1980, and till then no coercive process shall be employed for the recovery of the amount. In view of the fact that the petitioner has agreed to appear before the Additional Commissioner, Commercial Taxes, Jaipur, on 15th January, 1980, no notice need be sent to him.