

(2002) 11 RAJ CK 0032

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 41 of 2002

Commercial Taxes Officer

APPELLANT

Vs

Deewan Rubber Industries Pvt. Ltd.

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Rajasthan Sales Tax Rules, 1995 — Rule 62A

Citation : (2003) 132 STC 211

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : N.K. Gupta and P.K. Kasliwal, for the Appellant;

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—This sales tax revision has been filed against the order of the Rajasthan Taxation Board, Ajmer, dated November 26, 2001 by which the Board has been pleased to dismiss the appeal preferred against the order of the Deputy Commissioner (Appeals), Jaipur who had set aside the order imposing penalty for not carrying form No. 18A along with the goods which were transported from one State to another.

2. Thus the controversy which arises herein is whether the respondent-dealer could be penalised for not carrying form No. S.T. 18A which is a declaration for importing the goods from another State and whether in the facts and circumstances of this case, the respondent-dealer could be held to have violated the provisions of the Rajasthan Sales Tax Act, 1994 read with the Rajasthan Sales Tax Rules, 1995. The respondent-dealer admittedly was carrying goods which included tyre, tubes which were transported from Delhi to Jaipur when the vehicle carrying these goods was checked and although the goods along with the papers regarding its carriage and delivery challan were accompanied, the dealer did not carry form of declaration given out under form No. 18A which lays down as follows :

"To,

The in-charge check-post

Declared and certified that the goods, particulars of which are given below, have been imported by me/us or have been consigned to me/us from outside the State for purposes mentioned in Rule 52 and hold myself/ourselves liable for payment of tax as per law to the Government on the sale thereof."

3. From a perusal of this form it is clear that the whole idea of carrying this form is that a dealer may not be allowed to sell off the goods without paying the sales tax to the State to which the goods have been imported. The declaration also clearly lays down that the dealer would hold himself liable for payment of tax as per law to the Government on the sale thereof.

4. An amendment, however, was introduced in Rule 62-A of the Rajasthan Sales Tax Rules as a result of which the check-posts were abolished and this amendment was effective from May 1, 1995 to July 6, 1995 and it is for this reason that the respondent-dealer was not carrying form No. 18A. The argument advanced on behalf of the petitioner-Commercial Tax Officer is that the Rajasthan Tax Board as also the Rajasthan Appellate Authority were unjustified in exonerating the respondent-dealer from inferring dishonest intention of evasion from payment of sales tax because the amendment had merely abolished the check-post and had not abolished the carrying of the form No. S.T. 18A and therefore, the dishonest intention was rightly inferred by the officer checking the vehicle in order to detect evasion from payment of sales tax.

5. This matter is still at the admission stage, but I do not feel impressed with the arguments advanced by the petitioner's advocate and hence, I do not feel the need to summon the respondent-dealer to this Court for contesting this revision. The declaration under form No. S.T. 18A is merely in the form of a statement to the effect that the goods under carriage are from outside the State and in the event of its sale, it would be liable for payment of sales tax. So, the basic idea is to declare and discuss through the form that the goods were imported from outside the State. In the case at hand, the respondent was carrying all other papers, viz., (1) Bilty No. 198 dated May 29, 1995 of Rs. 3,04,575, (2) Invoice/Consignment Transfer No. 0106 dated May 29, 1995 of Rs. 3,04,575 and (3) Delivery challan No. 224 dated May 29, 1995 of Rs. 41,735 indicating that the goods were carried from outside the State and merely because the form No. 18A was not accompanied on account of the fact that the check-post has been abolished, dishonest intention on the part of the respondent-dealer cannot be reasonably inferred. In a situation of this nature even if remotely it could be inferred that the dealer had deliberately avoided carrying form No. 18A and the goods were also not accompanied with the other documents of carriage from outside the State perhaps something could be inferred against the dealer, but in view of the fact that all other papers disclosing import were accompanied with the goods carried, but and form No. 18A was not carried along with those goods

on account of the ambiguous situation created by the existing amendment, it will have to be inferred that the dealer at the relevant time was not carrying these papers on account of the amendment which was existing at the relevant time. This was the view of the appellate authority as also the Rajasthan Tax Board and I fully concur with the view taken by the courts below. The impugned order in any case does not result into miscarriage of justice or loss of revenue to the State exchequer as it is not even the case of the petitioner that there has been evasion of payment of the sales tax. The intention of the respondent in my view at the most can be treated as an irregularity, but not an illegality so as to interfere with the order at the revisional stage.

This revision petition thus has no merit and hence it stands dismissed at the admission stage itself.