(1985) 10 RAJ CK 0009

In the Rajasthan High Court

Case No : Sales Tax Reference No. 15 of 1982

Commercial Taxes Officer — APPELLANT

Vs

Kanhayalal Mohanlal — RESPONDENT

Date of Decision : 15-10-1985

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15
Rajasthan Sales Tax Rules, 1955 — Rule 25C

Citation : (1985) 64 STC 449 : (1985) 2 WLN 722

Hon'ble Judges : Shyam Sunder Byas, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This Court, by its order dated November 15, 1979, passed in D.B. Sales Tax Case No. 25 of 1979, directed the Board of Revenue for Rajasthan, Ajmer (for short "the Board"), to state the case and refer the following question of law for its opinion :

Whether, in the facts and circumstances of the case, the Board of Revenue was justified in holding that even though the default on the part of the dealer under Rule 25C was established, yet it only constituted a technical breach and may be overlooked ?

2. The question is said to arise out of the order dated March 14, 1978, passed in Special Appeal No. 121/74/ST/Pali, which the Board refused to do by its order dated November 15, 1978. The reference was pending on May 1, 1985, the date on which the Rajasthan Sales Tax (Amendment) Act, 1984 (No. 20 of 1984) (for short "the Amendment Act"), came into force. According to Section 13(11) of the Amendment Act, this reference has been treated and heard as a revision u/s 15 of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act"), as substituted by the Amendment Act.

3. The dealer-assessee (non-petitioner) was assessed to tax for the period November 3, 1964 to October 24, 1965. It had sold certain goods taxable at the last point on declaration in form S.T. 17. Some of the declarations in form S.T. 17 covered more than one transaction'' of sale. The Commercial Taxes Officer, Pali ("the C.T.O." herein), by his order dated February 4, 1967, rejected such declaration forms and imposed tax on the sale transactions. The Deputy Commissioner (Appeals), Jodhpur, on appeal, by his order dated March 22, 1969, set aside the levy of tax on such sales. The dealer-assessee went in revision before the Board (sic). The learned single Member of the Board confirmed the order of the Deputy Commissioner (Appeals). Thereafter, special appeal was filed and the Division Bench of the Board in its order dated March 14, 1978, opined that form S.T. 17 should not have been used for more than one transaction of sale, but this default on the part of the dealer was a technical one and should be overlooked if the use of form S.T. 17 was otherwise justified for transactions covered by a single form. The order passed by the learned single Member of the Board was maintained. An application u/s 15(1) of the Act was filed, which was rejected by the Division Bench of the Board on November 15, 1978. Thereafter the application u/s 15(2)(b) of the Act was submitted to this Court, on which this Court directed the Board to state the case and refer the aforesaid question of law.

4. This reference is being disposed of as a revision u/s 15 of the Act, as substituted by the Amendment Act.

5. We heard Mr. K.C. Bhandari, learned counsel for the C. T. 0., as nobody appeared on behalf of the dealer-assessee.

6. Rule 25C of the Rajasthan Sales Tax Rules, 1955 (for short "the Rules"), as it stood then, read as under :

25C. Furnishing of declaration.-(1) A dealer who is entitled to and claims-

(i) exemption from payment of tax ; or

(ii) payment of tax at a concessional rate ;

(a) on sales made to a registered dealer of goods taxable at the last point for the purpose of-

(i) resale within the State ; or

(ii) sale in the course of inter-State trade or commerce ; or

(iii) sale in the course of export out of the territory of India; or

(iv) sale outside the State ; or

(b) on the sale of any raw material eligible for concessional rate of tax, u/s 5C; or

(c) on sale of any such goods as may be exempted from tax, on the condition of furnishing declaration, shall in respect of each such sale, obtain a declaration from the purchasing dealer in form S.T. 17 and shall along with the return under Rule 25, file all declarations obtained as aforesaid and also submit a separate list of such sales in form S. T. 16 :

Provided that no declaration shall cover more than one transaction.

7. It has been found that the dealer-assessee had obtained S.T. 17 declaration in form in respect of more than one sales. In other words, the declaration in form S.T. 17 filed by the dealer-assessee covered more than one transaction of sale and, thus, there was default on the part of the dealer-assessee, so far as Rule 25C of the Rules is concerned. The Division Bench of the Board took the view that it was not permissible for the dealer-assessee to have used one form S.T. 17 for more than one transaction, but it constituted only a technical breach and this should be overlooked, if form S.T. 17 was good in other respects for the multiple transactions declared in single form.

8. The dealer-assessee has committed an error in entering more than one transaction in one declaration form, as required by Rule 25C(1) of the Rules, but such error by a registered dealer in respect of the declaration in form S.T. 17 is only a technical breach, for, in that case, there cannot be the intention of the registered dealer to evade the sales tax, which is leviable and imposable under the Act. Section 16 of the Act deals with offences, penalties and prosecutions, etc. For breach of Rule 25C of the Rules, penalty can be imposed on the dealer-assessee. Penalty is not imposable merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation or for default in not complying with the provisions of the Act or the Rules is a matter of discretion to be exercised judicially and on a consideration of all the relevant circumstances. The authority competent to levy penalty can refuse to impose the penalty when there is technical breach of the provisions of the Act or where the dealer-assessee under a bona fide belief acts in disregard of the provisions of the Act or the Rules. For imposition of penalty under the taxing statutes for defaults or non-compliance metis rea has to be established. According to Rule 25C(1), as it stood then, each transaction of sale should have been entered in separate declaration form S.T. 17, whereas the dealer-assessee in this case has entered more than one transaction of sale in one single declaration in form S.T.17. The transactions of sale, as envisaged by Rule 25C(1), have, of course, been correctly disclosed in single form S.T.17 ; the breach of the rule only is that instead of showing each transaction of sale in separate form S.T.17, more than one transaction were shown in one single form S.T.17. In these circumstances, it cannot be said that the dealer-assessee intended to evade sales tax so as to frustrate important object of the Act. This, in our opinion, is nothing but a technical error. The default committed by the dealer-assessee, or for that matter non-compliance of Rule 25C(1) of the Rules in this respect is merely technical and should be overlooked, so as not to entail the consequence of imposition of penalty on the transactions of sales contained in form S.T.17, if they are

otherwise in order. The view taken by the Division Bench of the Board is correct

9. The Board of Revenue was justified in holding that even though the default on the part of the dealer-assessee under Rule 25C of the Rules was established, yet this default only constituted a technical breach and may be overlooked. No interference is called for with the order dated March 4, 1978, of the Division Bench of the Board.

10. The result is that the revision (reference treated as revision) fails and it is hereby dismissed without any order as to costs.