(1986) 12 RAJ CK 0026

In the Rajasthan High Court

Case No : Sales Tax Revision No. 28 of 1979

Commercial Taxes Officer APPELLANT

Vs

Mahaveer Financiers RESPONDENT

Date of Decision : 18-12-1986

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 16

Citation : (1987) 67 STC 395

Hon'ble Judges : J.S. Verma, C.J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; V.K. Singhal, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This is a revision u/s 16 of the Rajasthan Sales Tax Act, 1954 as amended by the Rajasthan Sales Tax (Amendment) Act, 1984. As a result of this amendment a new Section 15 has been substituted in the principal Act resulting in substitution of the remedy of revision to this Court in place of a reference provided earlier. Section 13 of the Amendment Act contains the transitory provisions according to which a pending reference is to be treated as a revision under the new Section 15 of the principal Act. This is how the present revision comes up for revision.

2. The Commercial Taxes Officer, Special Circle I, Jaipur, determined the tax liability of the assessee, M/s. Mahaveer Financiers, Jaipur, for the period from 1st August, 1964 to 31st July, 1965 by the assessment order dated 19th September, 1967. The assessee''s appeal to the Deputy Commissioner was partly allowed by order dated 6th December, 1968. The assessee then filed a revision to the Board of Revenue, which was decided by a Single Bench on 24th July, 1970. The Commercial Taxes Officer, Special Circle I, who was the original assessing authority, then filed a special appeal on 21st September, 1970 against the decision of the Single Bench. It appears that subsequent to it there was a change in the jurisdiction of the authority as a result of which the Commercial Taxes

Officer, Circle B, Jaipur got jurisdiction over such a matter, and, therefore, the required verification in the memorandum of appeal was made by him on 11th December, 1972 and again on 17th April, 1973.

3. An objection was taken to the maintainability of the special appeal, because the verification had been made by the Commercial Taxes Officer, Circle B and not the Commercial Taxes Officer, Special Circle I, who was the initial assessing authority. The Division Bench of the Board of Revenue dismissed the special appeal as incompetent on the ground that the verification should have been made by the Commercial Taxes Officer, Special Circle I, Jaipur and not the Commercial Taxes Officer, B Circle. This order which is challenged in the present revision arises in the manner earlier stated.

4. Admittedly the special appeal was filed by the competent person, namely, the Commercial Taxes Officer, Special Circle I, even according to the objection taken to its tenability. The only defect pointed out was to its verification not being done by the Commercial Taxes Officer, Special Circle I. Assuming that there was any such defect in the verification, the same was at best a curable irregularity. It was, therefore, necessary to give an opportunity to the appellant to have the verification made by the Commercial Taxes Officer, Special Circle I, before dismissing the appeal on that ground. Learned counsel for the Revenue stated that in order to circumvent this objection, without entering into the controversy, the Revenue offers, to have an additional verification made by the Commercial Taxes Officer, Special Circle I as well in the memorandum of the special appeal. In my opinion, this would be the appropriate course to adopt in the present case in view .of the offer made on behalf of the Revenue. It is obvious that Board of Revenue committed an illegality in dismissing the special appeal without giving such an opportunity to the Revenue to cure the defect, if any.

5. Consequently, the revision is allowed. The case shall now go back to the Tribunal which would afford an opportunity to the Revenue to have the verification made also by the Commercial Taxes Officer, Special Circle I, Jaipur, and it shall then proceed to decide the special appeal on merits in accordance with law after hearing both the sides. No order as to costs.

