(1989) 01 RAJ CK 0033

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 634 of 1987

Commercial Taxes Officer — APPELLANT

Vs

Mohanlal Shantilal Jain — RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 16(1)(i)

Citation : (1989) 74 STC 214

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

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant;

Final Decision : Allowed

Judgement

Jagdish Sharan Verma, C.J.—This is a revision against the order dated 23rd February, 1987 passed by the Sales Tax Tribunal in an appeal by the assessee.

2. The department took action against the assessee for concealment of a transaction which is punishable in accordance with Section 16(1)(i) of the Rajasthan Sales Tax Act, 1954. This action of the department has been set aside by the Tribunal, in the assessee''s appeal, by the impugned order.

3. A perusal of the Tribunal''s order shows that it accepted the department''s case that certain bags of chilly were found in a godown of the assessee, which had not been disclosed by the assessee even though the fact of checking the godown was required to be intimated to the department in accordance with the Rules within the prescribed period. The Tribunal has then said that mere failure to give intimation of this fact does not prove concealment of the transaction. It has then said that sales tax has not been paid by the dealer on the same, which can be recovered. The department is aggrieved by the Tribunal''s order made on this basis alone.

4. It is clear from the Tribunal''s order that the basic fact of nondisclosure of facts required to be intimated by the dealer to the department within the

prescribed period, in accordance with the rules, has been accepted by the Tribunal. The question, therefore, is whether this fact, coupled with the attendant circumstances, justify the conclusion of concealment reached by the assessing authority. The Tribunal has merely said that this fact alone is not sufficient to prove concealment, without taking into account the attendant circumstances and even caring to see the tax due on that transaction had been paid or not. It is, therefore, clear that the Tribunal has set aside the order of the Deputy Commissioner in the appeal before it, without recording the requisite findings to sustain the conclusion. The Tribunal must, therefore, decide the appeal afresh, taking into account of the facts and circumstances relevant for deciding the question of concealment.

5. Consequently, the revision is allowed, the impugned order of the Tribunal dated 23rd February, 1987 is set aside. The Tribunal shall now decide the appeal afresh in accordance with law.