(2010) 11 RAJ CK 0139

In the Rajasthan High Court

Case No : Sales Tax Revision No. 191 of 2010

Commercial Taxes Officer APPELLANT

Vs

Shri Rajesh RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(10A), 78(2)

Citation : (2010) 11 RAJ CK 0139

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the Petitioner.

2. Assessing officer vide its order dated 18.05.2004 levied penalty u/s 78(10-A) of the Rajasthan Sales Tax Act, 1994(hereinafter referred to as ''the Act of 1994''), which was set aside by Deputy Commissioner (Appeals) in an appeal filed by the Assessee vide order dated 08.02.2006. Rajasthan Tax Board dismisse d the appeal of the Petitioner/department vide judgment dated 15.09.2009, which is under challenge in this revision petition preferred on behalf of the Petitioner.

3. Submission of learned Counsel for the Petitioner is that although all the relevant documents including Form ST 18-A were available and produced for checking at the time of checking of the vehicle/goods, but since seal of check post of Commercial Taxes Department of the State of Rajasthan was not there on the documents, therefore, there was no illegality in levying the penalty by the assessing officer. He, therefore, contended that orders passed by both the appellate authorities may be set aside and order passed by the assessing officer may be restored.

4. I have considered the submissions of learned Counsel for the Petitioner in the light of reasons assigned by both the appellate authorities for setting aside the

penalty order passed by the assessing officer.

5. Learned Counsel for the Petitioner does not dispute that all the required documents, as per provisions of Section 78(2)(b) of the Act of 1994, were available and produced at the time of checking of vehicle/goods and required tax had already been paid by the Assessee. So far as seal of check post of the State of Rajasthan on the documents is concerned, the same is not a mandatory requirement, as per provisions of Section 78(2)(b) of the Act of 1994.

6. Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal, reported in (2003) 6 TU 84 held that these provisions are not mandatory and are directory in nature. Division Bench of this Court further held that if all the requisite documents are available at the time of checking of vehicle/goods, then intention to evade tax cannot be inferred. Both the appellate authorities have recorded a concurrent finding that there was no mens-rea on the part of the Assessee, as all the required documents were available and tax had already been paid by the Assessee, therefore intention to evade tax cannot be inferred.

7. In these circumstances, I do not find any illegality in the concurrent finding recorded by both the appellate authorities so as to interfere with the same in this revision petition.

8. No question of law is involved in this revision petition and the same is, accordingly, dismissed in limine.

