(2010) 10 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Miscellaneous Stay Application No. 1633 of 2010 in . Sales Tax Revision No. 63 of 2010

Commercial Taxes Officer APPELLANT

Vs

Shri Rohtash RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(10A)

Citation : (2011) 42 VST 575

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. Learned Assessing Authority vide its order dated 17.11.2004 levied penalty u/s 78(10A) of the Rajasthan Sales Tax Act, 1994 (for short ''the Act of 1994'') for alleged violation of clause(b) of Sub-section (2) of Section 78 of the Act of 1994.

3. Being aggrieved with the same, the Assessee preferred an appeal, which was allowed by the Deputy Commissioner(Appeals). Thereafter the Department preferred second appeal but the same was also dismissed by the Rajasthan Tax Board, Ajmer vide impugned judgment dated 30.09.2009, which is under challenge in this revision petition.

4. Learned Counsel for petitioner fairly and frankly admitted that required documents were available with the vehicle at the time of its checking, but his contention is that since seal of Check Post was not there on the relevant documents, therefore, it should have been treated as violation of Section 78(2)(b) of the Act of 1994.

5. I have considered the submissions of learned Counsel for petitioner in the light of reasons assigned by the First Appellate Authority as well as Rajasathan Tax Board both and I find that both the Appellate Authorities have rightly accepted

the explanation of the assessee for not bearing seal of Check Post on the required documents, to the effect that the person incharge of the vehicle had come to Dhaba Complex, Bhiwadi for his some personal work. Both the Appellate Authorities have thoroughly examined the matter and recorded a finding that it is not the case of violation of Section 78 (2) (b) of the Act, as all the required documents were accompanied with the vehicle.

6. It is not the case of Department that the driver or person incharge of the vehicle abstained from bringing or stopping the vehicle at the nearest check post. In these circumstances, I do not find any force in the submissions of learned Counsel for petitioner.

7. It is also relevant to mention that revision to this Court lies where a question of law is involved in it. The controversy involved in the present matter relates to question of fact and there is concurrent finding of fact by both the Appellate Authorities.

8. In these circumstances, I do not find any question of law involved in the present revision petition and there is no merit also in it, therefore, the revision is dismissed in limine.

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9. Since revision petition has been dismissed, therefore, the stay application does not survive and the same also stands dismissed.