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(1989) 03 RAJ CK 0032

In the Rajasthan High Court

Case No : Sales Tax Revision No''s. 565, 566 and 567 of 1987

Commercial Taxes Officer APPELLANT

Vs

Sojat Lime Co. RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 16(1)(e)

Citation : (1989) 74 STC 288

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

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; B.C. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, C.J.—These three revisions are against the common order dated 4th February, 1987 passed by the Rajasthan Sales Tax Tribunal relating to three periods of assessment, namely, 1st October, 1970 to 30th September, 1971, 1st October, 1971 to 30th September, 1972 and 1st October, 1972 to 30th September, 1973. By this common order the Tribunal has set aside the penalty imposed on the dealer u/s 16(1)(e) of the Rajasthan Sales Tax Act for non-inclusion of cinder (burnt coal purchased from railways) in the returns filed by the dealer for these three periods of assessment. The assessing authority merely said that the explanation given by the dealer for non-inclusion in the return that according to it no sales tax was leviable on the transaction, was not acceptable. Merely after rejecting the dealer''s explanation the assessing authority imposed the penalty u/s 16(1)(e) of the Act. The Tribunal has taken the view that the penal consequence envisaged by Section 16(1)(e) of the Act is not attracted in the present case since the circumstances indicate that there was no attempt at concealment of the transaction which was shown in the books of accounts maintained by the dealer and produced before the sales tax authorities. The Tribunal has, therefore, set aside the imposition of penalty u/s 16(1)(e) of the Act in respect of all these three periods of assessment. Hence these revisions by the department.

2. The penalty provided in Section 16(1)(e) of the Rajasthan Sales Tax Act, 1954 is attracted if any person

has concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein.

3. It is obvious that the penalty is attracted when the act of the dealer is a conscious act of concealment of any particulars or of deliberate furnishing of inaccurate particulars in his return. It has been held in the Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, while construing a similar provision in Section 28(1)(c) of the Income Tax Act, 1922 that mere rejection of the explanation of the assessee as false does not automatically attract penalty in such a situation and before the penalty can be imposed it must be held that the assessee had consciously concealed the particulars or had deliberately furnished inaccurate particulars. In the present case the Tribunal has held that there was no attempt at concealment by the dealer and his act was bona fide, inasmuch as, the transaction was shown in the books of accounts produced before the departmental authorities and the same was not shown in the return since the dealer contended that the transaction was not exigible to sales tax. There is thus no infirmity in the Tribunal''s order setting aside the penalty imposed by the assessing authority u/s 16(1)(e) of the Rajasthan Sales Tax Act.

4. Consequently, these revisions are dismissed. No costs.

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