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(1980) 08 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Sales Tax Reference Application No. 224 of 1980

Commercial Taxes Officer (Revisions) APPELLANT

Vs

Virendra Kumar Raj Kumar and Another RESPONDENT

Date of Decision : 14-08-1980

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

Citation : (1981) 48 STC 465

Hon'ble Judges : N.M. Kasliwal, J;M.L. Shrimal, J

Bench : Division Bench

Advocate : S.M. Mehta, for revenue, for the Appellant;

Judgement

M.L. Shrimal, J.—M/s. Virendra Kumar Raj Kumar (Ramganj Mandi) (hereinafter referred to as the assessee) was assessed for the year 1973-74 and tax was levied on red chillies. A penalty of Rs. 1,800 u/s 16(1)(e) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), for evading the payment of tax was also imposed vide order dated 5th February, 1974. Feeling aggrieved with the order of the assessing authority the assessee preferred an appeal before the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) upheld the order of the assessing authority vide its order dated 14th April, 1975. The assessee went up in revision challenging the order of the assessing authority as well as that of the Deputy Commissioner (Appeals). The two members hearing the appeal differed with each other regarding the levy of tax on red chillies and therefore the case was referred to the third member for decision. The third member to whom the case was referred agreed with the view taken by Shri B. Hooja and upheld the levy of tax on red chillies.

2. As there was difference of opinion amongst two members regarding the levy of tax on red chillies the member of the Board of Revenue came to the conclusion that no guilty intention should be imputed to the assessee and the penalty was not leviable.

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3. Thereafter the revenue moved an application u/s 15(1) of the Act for referring the following question of law :

Whether, under the facts and circumstances of the case, the Board of Revenue was justified in setting aside the penalty of Rs. 1,800 imposed u/s 16(1)(e) of the Rajasthan Sales Tax Act, 1954, when the tax levied on red chillies was upheld ?

4. The Board of Revenue failed to decide the reference petition within the stipulated period of limitation. Hence this application u/s 15(3A) of the Act.

5. When two learned members of the Board of Revenue deciding the case differed with each other on the point of levy of tax on red chillies, it cannot be said that the assessee had a mens rea in not paying the tax in time. The bona fide belief on the part of the assessee that a particular item is not taxable in the facts and circumstances of the case cannot be doubted. In our considered opinion no question of law arises which needs to be answered by this Court.

6. The application for calling a statement of case and for directing to refer a question of law for the opinion of this Court is refused.

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