(2009) 01 RAJ CK 0061

In the Rajasthan High Court

CTO APPELLANT

Vs

Shri Mirbahadur RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 2(9), 30(5)

Citation : (2009) 1 RLW 837 : (2010) 35 VST 154

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—This revision petition filed by the Revenue is directed against the order of the Tax Board dated 12th October, 2006 whereby the Tax Board rejected the revenue''s appeal, upholding the order of the Dy. Commissioner (Appeals) in favour of the respondent assessee that the respondent assessee was not liable to pay the entry tax on the purchase and import of motor vehicles viz. chassis of a truck under the provisions of Rajasthan Tax on Entry of Motor Vehicles into Local Areas Act, 1988 (hereinafter referred to as Act of 1988).

2. The Tax Board held that the respondent assessee was a ''casual trader'' and, therefore, the limitation for passing assessment order against him was only 2 years as prescribed u/s 30(5) of the Rajasthan Sales Tax Act, 1994, the provisions of which were mutatis mutandis applied to the said Act of 1988.

3. Learned Counsel for the Revenue urged that there was no basis or justification with the Tax Board to hold the respondent assessee as ''casual trader'' though he did not fall within the definition of ''casual trader'' as defined in Section 2(9) of the RST Act, 1994 as the transaction of purchase of motor vehicle in question was for personal use and not in the nature of business which was sine qua non for holding the respondent assessee to be a ''casual trader''. He further submitted that the question of applying the limitation of 2 years for passing assessment order could not, therefore, apply to the present facts of the case and

since admittedly prescribed form No. ET-1 prescribed under Rule 4 of the 1992 Rules was not furnished by the respondent assessee, therefore, the respondent assessee also failed to establish before the authorities below that the said motor vehicle was purchased by him for personal use. He, therefore, submits that the imposition of entry tax along with the interest and penalty on the respondent assessee was justified and the appellate authorities erred in setting aside the same.

4. Learned Counsel for the respondent assessee submits that though form No. ET-1 was not furnished by the respondent assessee but since assessee was a ''casual trader'' therefore, the limitation of 2 years applied in the present case and the Tax Hoard was justified in holding the assessment by the learned CTO to be barred by limitation.

5. I have heard learned counsels and perused the impugned orders.

6. The definition of the "casual trader" as given in Section 2(9) of the 1954 Act is reproduced herein below for ready reference:

2(9) "Casual trader" means means a person who has, whether as principal agent or in any other capacity, occasional transactions of a business nature involving buying, selling, supplying or distributing of such goods as may be specified by the State Government by issuing a notification, whether for cash or deferred payment, or for commission or remuneration or other valuable consideration;

7. Section 31 deals with the assessment in the case of casual traders also provides that if a casual trader is registered under the Act, he shall be assessed like any other registered dealer, however, if he is not registered under the Act then an obligation is cast upon such casual trader to make a report of the transaction in question to the concerned assessing authority having jurisdiction and upon such report, the assessment has to be made by the concerned assessing authority, in such circumstances only, the period of limitation of 2 years prescribed under Sub-section (5) applies otherwise Section 30 of the Act providing for escaped assessment which provides for a limitation of 5 years deals with the escaped assessment which includes the case of a dealer required to be registered, but not registered besides assessment of escaped turnover.

8. After hearing learned counsels, this Court is of the opinion that there was no basis available with the Tax Board to treat the respondent assessee as a ''casual trader'' of the motor vehicle in question. It was a single transaction of purchase of motor vehicle not in the nature of business at all. The very definition of ''casual trader'' envisages ''occasional transactions of a business nature'' involving buying and selling of the goods. Therefore, the plurality of the transactions is a must for treating anybody as a casual trader. Admittedly in the present case, it was a single transaction and, therefore, no question of treating the respondent assessee a ''casual trader'' could arise. Therefore, the question of applying the limitation u/s 31(5) of the Act which deals with the assessment in case of ''casual trader'' does not arise. Since the respondent assessee admittedly

did not furnish the form No. ET-1 required to establish the case of personal user by the respondent assessee, therefore, the question of any exemption from levy of entry tax also could not arise in the present case. The learned assessing authority was, therefore, justified in framing the assessment hi question on 5.6.2002 after giving a notice in this regard dated 13.2.2002 to the respondent assessee. The said assessment order produced as Annex. 1 in the said revision petition clearly stipulates that the respondent assessee had neither got issued the form No. ET-1 nor furnished any such form to the Assessing Authority. This Court is at loss to understand how the Tax Board could treat the respondent assessee as a ''casual trader'' just for askance without any evidence being there in this regard and hold the assessment to be time barred. The impugned order of Tax Board, therefore, cannot be sustained.

9. As far as rate of tax is concerned, it appears that since the assessee did not appear before the assessing authority, he applied the rate applicable on the date of passing of the assessment order on 5.6.2002 whereas the date of purchase of the vehicle in question was 16th September, 1999 which as per the notification dated 26.3.1999 (serial No. 1216) was under entry 76 only 4% applicable to all type of motor vehicles. Therefore, to this extent, the assessment order should stand modified.

Accordingly, this revision petition is allowed and setting aside the order of the learned Dy. Commissioner (Appeals) as well as Tax Board, the assessment order is restored subject to rate of tax being corrected from 12% to 4% as per notification dated 26.3.1999. The learned CTO will be at liberty to pass fresh order accordingly within a period of 3 months from today. The respondent assessee shall appear before the assessing authority in the first instance in this regard on 10th February, 2009 and thereafter the learned assessing authority may pass fresh orders in accordance with law s to levy of entry tax @ 4% interest and penalty thereon. No order as to costs.

