(2001) 02 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3050 of 1997

M/s. Narinder Nath and Co. APPELLANT

Vs

Raj Taxation Tribunal RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 11

Citation : (2001) 2 RLW 899 : (2002) 125 STC 29 : (2001) 2 WLC 215 : (2001) 1 WLN 732

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : Dinesh Mehta, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

Balia, J.

(1). Heard teamed counsel for the parties. A short question has been raised in this petition.

(2). Section 11B was inserted in the Rajasthan Sales Tax Act, with effect from 2.5.69 and the provision was also made applicable to the demands under the CST Act with effect from the said date retrospectively by later amendment.

(3). On the amount of tax having remained unpaid after it became due to be paid, the Assessing Officer has levied interest on the said outstanding demands with reference to provisions of Section 11B for assessment years 1965-66, 1966-67, 1967-68 and 1968-69. There is no dispute that the interest has been lavied with effect from the date of insertion of said provision. The assessee has challenged levy of interest firstly before the Rajasthan Taxation Tribunal by filing a writ petition challenging the validity of provisions of Section 11B on various grounds including the ground that it could not have been levied retrospectively. The said challenged however failed as the Rajasthan High Court has upheld its validity.

(4). The only contention raised before us is that levy of interest could not have been made in respect of assessment period prior to 2.5.69 when Seclion 1 IB was first inserted in the Rajasthan Sales Tax Act, 1954 in as much as that would amount to giving the provisions retrospective effect which was not envisaged. It was contended by Mr. Mehta that in respect of tax which fell due to be paid prior to 2.5.69 will not be governed by provisions of Section 11B. In absence of any provision of interest no interest could be levied.

(5). Having carefully considered the submissions of the parties, we are unable to sustain it for the simple reason that interest is primarily for compensating a person for having kept somebody else''s money for its own use. It cannot be doubted if tax is not deposited or paid when it became due to be paid under the statute under which the same is levied, it becomes a debt and a person or assessee thereafter is making use of this money which is not of his own, for his own use and he must ordinarily compensate the person whose money, he is using, Section 11B is not penalty provision, but merely gives effect to this principle.

(6). Since question of levy of interest prior to insertion of the provision is not before us, it hardly needs any argument that any amount which remained outstanding at the time Section 11B was inserted alleast would carry interest henceforth until the same is paid.

(7). It is further contended by the learned counsel for the petitioner that atleasl no interest could be levied in respect of the tax chargeable under the CST Act in view of the fact that provision of Section 11B was not extended to the Central Sales Tax Act and in view of decision of Hon''ble Supreme Court in the case of India Carbons vs. State of Urissa (1), no interest was leviable in respect of liability of tax payable under the CST Act. However, it is not in dispute that after the decision of Hon''ble Supreme Court the provision of interest on demand outstanding under the CST Act has also been inserled with retrospective effect from the same date on which Section 11B was inserted in Rajasthan Sales Tax Act. No. question as to the validity of vires of the Central Sales Tax Act regarding that amendment giving effect retrospectively has been raised before us and, therefore, in the face of existing statute, we are the opinion that the judgment of the Hon''ble Supreme Court would not apply to the present case.

(8). Accordingly, this petition fails and is hereby dismissed.

