(2001) 11 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition No. 410 of 2001

Pawan Carriers and Another — APPELLANT

Vs

State of Rajasthan and Another — RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(5)

Citation : (2002) 3 WLN 665

Hon'ble Judges : Rajesh Balia, J;Harbans Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.

1.In this case the petitioner has challenged in the first instance the vires of Section 78(5) and Section 84(3) of the Rajasthan Sales-Tax Act, 1994.

2. This Court has earlier struck-down Sub-section (5) of Section 78 as ultra vires in M/s. D.P. Metals and Ors. v. The State of Rajasthan vide its judgment dated 16.8.2000 passed in D.B. Civil Writ Petition No. 1902/99. The said judgment has since been reversed by the Hon''ble Supreme Court and the constitutional validity of the said provision has been upheld, therefore, that question no more survives for consideration. The challenge to vires of Section 84(3) had earlier been waived of by the . learned Counsel for the petitioner.

3. Under these circumstances, no question of vires now survires for consideration in this writ petition. Even otherwise alternative remedy is available to the petitioner to challenge the order passed by the concerned assessing authority by way of appeal.

4. In these circumstances, this writ petition is dismissed reserving the right of the petitioners to file an appeal if they so desire within a period of three weeks. If such an appeal is filed within three weeks, the Appellate Authority shall

entertain the appeal without raising objection about limitation and shall decide it on merits.

5. No order as to costs.

