(1986) 03 RAJ CK 0030

In the Rajasthan High Court

Case No : Sales Tax Revision No. 133 of 1986

Ramswaroop APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Rajasthan Sales Tax Act, 1964 — Section 15

Citation : (1987) 67 STC 478

Hon'ble Judges : S.K. Mal Lodha, J;Pana Chand Jain, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—As Mr. K. C. Bhandari is the Standing Counsel of the Sales Tax Department, he was asked to accept notice of this revision. Learned counsel for the petitioner has supplied the copy of memo of revision to Mr. K. C. Bhandari.

2. After ascertaining the views of the learned counsel appearing for the parties we consider it proper to dispose of this revision finally.

3. Facts leading to this revision petition u/s 15 of the Rajasthan Sales Tax Act (No. 29 of 1964) ("the Act" herein) as amended by the Rajasthan Sales Tax (Amendment) Act, 1984 (Act No. 20 of 1984) ("the Amendment Act") are these :

The Assistant Commercial Taxes Officer, Merta City, passed the ex parte assessment order dated June 30, 1981 u/s 10(4) for the accounting year April 1, 1979 to March 31, 1980 and April 1, 1980 to March 31, 1981 (assessment years 1979-80 and 1980-81). An appeal u/s 13 of the Act was filed before the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur. Along with the appeal the certified copy of the order appealed against was not filed as required by Rule 33 of the Rajasthan Sales Tax Rules, 1955 ("the Rules" hereinafter). Instead, a photostat copy of the assessment order dated June 30, 1981 under appeal was filed. The appeal was admitted by the Deputy Commissioner (Appeals). It was registered as Appeal No. 28-Ra-Nagaur/81-82. Upto the time of the registration of the appeal, no objection was raised that it was not accompanied by the certified copy of the assessment order appealed against. It appears that on November 16, 1981 it was ordered that it may be fixed for hearing on December 15, 1981 and the concerned parties may be informed. The Deputy Commissioner (Appeals) dismissed the appeal vide order dated December 1, 1982 without hearing the dealer-assessee and without affording him an opportunity to show cause why the appeal be not dismissed as certified copy of the assessment order dated June 30, 1981 has not been filed as required by Rule 33 of the Rules. A revision u/s 14 of the Act was filed before the Board. That revision was transferred to the Sales Tax Tribunal, Ajmer constituted u/s 2A of the Act to dispose it of as an appeal and the same was registered as Appeal No. 11/85/ Nagaur. The Single Member of the Tribunal by his order dated October 16, 1985 maintained the order of the dismissal of the appeal by the Deputy Commissioner (Appeals) on the ground that the view taken by the Deputy Commissioner (Appeals) is correct on the question that the dealer-petitioner, at the time of preferring the appeal, has not complied with Rule 33 of the Rules inasmuch as the memo of appeal was not accompanied by a certified copy of the assessment order appealed against and instead its photostat copy was filed.

4. We are concerned with the correctness of the order dated October 16, 1985 of the Single Member of the Sales Tax Tribunal. A perusal of the order dated December 1, 1982 of the Deputy Commissioner (Appeals) shows that photostat copy of the order was filed with the memo of appeal but it was not a certified one. It is not in dispute that no objection was raised before registering it that it was not accompanied by the certified copy of the assessment order appealed against as required by Rule 33 of the Rules. Not only that, a date of hearing of the appeal was fixed and it was ordered that concerned parties may be informed. Had the defect been pointed out before registering the appeal, the dealer-petitioner might have rectified. The photostat copy of the order received by the dealer-assessee was filed along with the memo of appeal.

5. Having regard to the aforesaid facts and keeping in view of the provisions of Rule 33 of the Rules, we are of opinion that the Single Member of the Sales Tax Tribunal should not have dismissed the appeal on the ground, on which he did as, the photostat copy of the original order received by the petitioner from the Assistant Commercial Taxes Officer, Merta City, was filed with the memo of appeal. The order dismissing the appeal cannot be sustained. It is accordingly set aside.

6. The result is that the revision is allowed, the order dated October 16, 1985 of the Sales Tax Tribunal, passed in Appeal No. 11/85/Nagaur is set aside and the case is sent back to the Sales Tax Tribunal for deciding the appeal afresh in accordance with law on merits after affording an opportunity of hearing to the concerned parties. No costs.