Mohd. Umar Mohd. Haroon Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-27-1981

Reported in : 1981WLN(UC)166

Judge : M.C. Jain and; K.S. Sidhu, JJ.

Appeal No. : D.B. Civil Writ Petition No. 409 of 1981

Appellant : Mohd. Umar Mohd. Haroon

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Shri. Purohit

Judgement :

M.C. Jain, J.

1. The facts giving rise to the present writ petition may briefly be stated as under. The petitioner-firm has been assessed for Rajasthan Sales Tax and Central Sales Tax for two years from 1-4-77 to 31-3-1979 by the Assistant Commercial Taxes Officer, Ward C-1, Makrana, his orders dated 5-11-80 (Ex. 1 to Ex. 4) and simultaneously he imposed penalty under Section 7AA of the Rajasthan Sales Tax Act as amended by the Amending Act No. 4 of 1979. The petitioner went in appeal before the Deputy Commissioner Commercial Taxes (Administration), Jodhpur. He moved an application for staying recovery of the penalty. The Deputy

Commissioner, Commercial Taxes (Administration) by its order dated 4-3-1981 declined to stay the recovery of the amount of penalty. The petitioner by this writ petition has challenged the imposition of penalty under Section 7AA and has also prayed that the order, which has been passed by the Deputy Commissioner, Commercial Taxes (Administration) on 4-3-1981 refusing to stay the recovery of penalty is contrary to proviso, third to Section 11, Sub-section (3), inasmuch as no reason have been recorded by the Deputy Commissioner, Commercial Taxes (Administration) in contravention of the said provision, so the orders dated 4-3-1981 (Ex. 5 to Ex. 8) may be quashed.

2. On behalf of the Revenue, the writ petition has been resisted so far as the imposition of penalty is concerned on the ground that an alternative remedy has already been availed by the petitioner inasmuch as he has filed appeals before the Deputy Commissioner, Commercial Taxes (Administration) and these appeals are still pending, so, this writ petition is not maintainable with regard to the assessment orders of penalty Ex. 1 to Ex. 4. As regards orders dated 4-3-1981, the parties are not at issue in view of a Bench Decision of this Court in Bhanwar Lal Jain v. The State of Rajasthan and Ors. 1979 WLN 701.

3. The learned Counsel for the petitioner, however, submitted that the petitioner has a right to appreach this Court under Article 226 of the Constitution, as the Assistant Commercial Taxes Officer had acted without jurisdiction in proceeding to assess the penalty under Section 7AA as amended by Act No. 4 of 1979. The assessment orders of penalty arc wholly without jurisdiction and so the petitioner can maintain this writ petition. In our opinion this submission of the learned Counsel for the petitioner, is wholly devoid of any merit. No authority has been cited in support of his contention by Shri Purohit, learned Counsel for the petitioner. In our considered opinion the Taxing Authority, namely, the Assistant Commercial Taxes Officer had jurisdiction to go into the question of imposition of penalty and further to consider as to whether the penalty is to be imposed under the provision of Section 7AA, as it stood prior to 7-4-1979 or thereafter. Which praticular provision is applicable for the purpose of imposition of penalty, could be considered by the Taxing Authority. Assuming for the sake of argument that a wrong provision of law has been relied upon but thereby it cannot be considered to

raise a question of jurisdiction and it cannot be said that the authority had no jurisdiction to decide that question. An erroneous view of law or application of wrong provision of law, does not raise a question of jurisdiction. Reference in this connection may be made to a Supreme Court decision in Smt. Ujjam Bai v. State of Uttar Pradesh and Anr. AIR 1962 S.C. 1621. It has been observed in this case as under:

An order of assessment made by an authority under a taxing statute which is intra vires and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is passed on a reconstruction of a provision of the Act or of a notification issued thereunder.

Thus it cannot be said that the taxing authority acted without jurisdiction.

4. The learned Counsel for the petitioner also referred to Article 20 of the Constitution and submitted that greater penalty could not have been imposed under the amended Section 7AA. In this connection suffice it to say that reference to Article 20 is absolutely uncalled for and has no relevance for it deals with a prosecution and penalty for offences and not for penalties, which are impossible under taxing statute. Thus, so far as the assessment orders Ex. 1 to Ex. 4 are concerned, the present writ petition is not maintainable.

5. As regards the orders dated 4-3-1981 passed by the Deputy Commissioner, Commercial Taxes (Administration), such orders are squarely covered by the above Bench decision of this Court. The Deputy Commissioner, Commercial Taxes (Administration) has, in disregard to the mandate of law, passed the orders Ex. 5 to Ex. 8 No reasons were recorded for refusing stay of recovery of amount of penalty and the mandate of law was ignored. In view of the non-compliance of mandate of law, the orders dated 4-3-1981 cannot be sustained and have to be quashed.

6. Accordingly, this writ petition is partly allowed. The orders of the Deputy Commissioner, Commercial Taxes (Administration), Jodhpur, dated 4-5-1981 are set aside and we direct the Deputy Commissioner, Commercial Taxes (Administration) to pass fresh orders on the stay application filed by the petitioner

in accordance with law. It is further directed that the recovery of amount of penalty may not be effected from the petitioner till the stay application is heard. The parties are hereby directed to appear before the Deputy Commissioner, Commercial Taxes (Administration), Jodhpur, on May 11, 1981. No notice need be sent to the petitioner. In the circumstances of the case, we leave the parties to bear their own costs of this writ petition.