Derby Textiles Ltd. Vs. State and ors.

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Court : Rajasthan

Decided On : Jul-25-1994

Reported in : 1995(1)WLC351; 1994(2)WLN409

Judge : Gokal Chand Mital, C.J. and; N.K. Jain, J.

Appeal No. : D.B. Civil Writ Petition No. 2678 of 1991

Appellant : Derby Textiles Ltd.

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

Gokal Chand Mital, C.J.

1. The order of Commercial Taxes Officer has been challenged straightway by filing this writ petition which is pending for last more than 3 years. The impugned order is appealable before the Dy. Commissioner (Appeals) then before the Rajasthan Sales Tax Appellate Tribunal and then in revision before this Court.

2. The vires of Section 2 (s) (iv) of the Rajasthan Sales Tax Act, 1954 has been challenged on the ground that it is not reasonable for the legislature to provide that an assessee must obtain a written declaration at the point of sale because a dealer may be able to prove the sale during the assessment proceedings.

3. We have considered this argument and are of the view that the challenge to vires of Section 2 (s) (iv) is without any merit and substance. Pursuant to the aforesaid provisions. Rule 25C of the Rajasthan Sales Tax Rules, 1954 has been framed, which envisages that a dealer is required to obtain a declaration from the purchasing dealer in Form No. S.T. 17 in case he seeks exemption of sales. The choice is left with the dealer to obtain exemption Under Section 2 of the Rajasthan Sales Tax Act from the taxable turn-over by producing Form No. S.T. 17 at any time before assessment or subject to such rules and regulations for extension of time. In-fact, the provision is an enabling provision to facilitate to seek exemption on production of Form No. S.T. 17. So, it is for the petitioner to decide whether he likes to seek exemption or not and if he does he must obtain the certificate.

4. It was then argued that should there be a condition like the obtaining of declaration form in writing from the purchaser or mere production of evidence at the stage of assessment is enough. In this behalf, Court cannot legislate and what has to be seen is whether the law made by the legislature is within its competence or is not arbitrary.

5. It cannot be disputed that the law made is within the competence of the legislature. As regards arbitrariness, we have already said that the provision is not arbitrary. Accordingly, we uphold the vires of Section 2 (s) (iv) of the Rajasthan Sales Tax Act.

6. On merits of the controversy, the petitioner is relegated to his remedy of appeal, which as stated before us, is already pending before the Appellate Authority.

7. The writ petition is dismissed.