

*In The High Court of Judicature for Rajasthan
Jaipur Bench, Jaipur
O R D E R
D.B. Special Appeal (Writ) No.1308/2013*

Date : 20.12.2013

Hon'ble Mr. Justice Ajay Rastogi

Hon'ble Mr. Justice J.K. Ranka

Mr. Sarvesh Jain, for appellant.

Mr. R.B. Mathur, for respondents.

Instant intra-court appeal has been filed assailing order of learned Single Judge dt.24.09.2013 whereby the prayer seeking direction to the revisional authority for decision which as alleged by the appellant filed on 29.04.2002, was rejected assigning detailed reasons.

The facts which culled out from the record clearly depicts that the appellant is the proprietorship firm & registered under Rajasthan Sales Tax Act & Central Tax Act dealing in trade of tax paid cereals & selling in the form of wheat flour (Atta) in the State of Rajasthan. However, the assessing authority for the assessment years-1999-2000 & 2000-01 made assessment vide order dt.24.05.2001 which was assailed by the appellant by filing appeal u/S 82 of the Act,1994 and there is condition of pre-deposit for entertaining appeal to the Deputy Commissioner (Appeals). However, after hearing the parties the appeal came to be decided vide order dt.19.08.2001 and the matter was remitted back to the assessing authority to decide afresh in accordance with law after providing necessary documents as demanded by the appellant. The assessing authority after the matter was remitted back under the directions of the Deputy Commissioner (Appeals) passed fresh order of assessment vide order dt.27.03.2002 and indisputably no appeal provided under the statute which contains the condition of pre-deposit was filed by the appellant. However, according to him he preferred revision where there is no condition of pre-deposit to be complied with u/S 87 of the Act and to support that the revision petition was preferred by the appellant-petitioner one acknowledgment receipt of 29.04.2002 has been placed on record just to show his bonafides. However, no efforts were made to know about the fate of revision if any preferred and after the demand notice was issued from the department in compliance of order of assessment dt.27.03.2002 applications were filed by the appellant-petitioner under RTI Act & created documents & evidence in support thereof and also approached to this Court by filing writ petition with the grievance that the revision which he preferred remained

pending for sufficient long time and the authority has failed to decide the same and at the same time the order of assessment dt.27.03.2002 is not legally sustainable.

After hearing the parties, the learned Single Judge observed that there was no tangible evidence on record which could support that revision was at all preferred more so when remedy of appeal was available with the appellant which at one stage was availed, he was aware of this fact that the order of the assessing authority is appellable which indisputably was not preferred and ordinarily where remedy of appeal has been provided the revision could not be preferred and that can always be exercised by the revisional authority *suo motu* in the facts of a given case.

In the instant case, the appeal was not preferred by the appellant u/S 82 of the Act, 1994 and as alleged that the revision was preferred by the appellant petitioner there is no tangible evidence on record in support thereof and this what the learned Single Judge observed after hearing the parties under order impugned.

After hearing counsel for the parties, we do not find any apparent error being committed by the learned Single Judge under order impugned which may require interference by this Court.

Consequently, the appeal is wholly devoid of merit and stands dismissed.

(J.K. Ranka),J.

(Ajay Rastogi),J.

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Certificate - All corrections have been
incorporated in the judgment/order being
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सत्यमेव जयते