
(2003) 10 RAJ CK 0002
In the Rajasthan High Court
Case No : Sales Tax Revision No. 778 of 2002

A.C.T.O. and Others

APPELLANT

Vs

Shiv Shambhu Agencies and Others

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

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

Citation : (2004) 1 RLW 445

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : Sundeep Bhandawat, Manoj Bhandari and Sangeet Lodha, for the Appellant; Gajendra Maheshwari and Dinesh Mehta, for the Respondent

Final Decision : Allowed

Judgement

Prasad, J.—This bunch of revision petitions have been filed by the State Government aggrieved by the orders of Tax Board wherein principally on the ground of absence of mens rea, the Tax Board has been persuaded to discharge the respondent from the liability of penalty imposed by the assessing authority and upholding the same by Dy. Commissioner (Appeals) [appellate authority].

2. The question regarding mensrea has already been adjudicated by this Court in M/s. Mutha Premraj v. Asstt. Commercial Tax Officer and Ors. (1), and another following various decisions of the Hon'ble Supreme Court and discussing them in detail. It has been held in this case that the presence of mens rea is not, a sine qua non, for levying penalty in case of violation of statutory provisions. In these revision petitions, I would have straightway held them to be covered by the decision given in Mutha Premraj (supra) but learned counsel for the respondents submitted that the decision given in Mutha Premraj (supra) requires reconsideration, therefore, I have given an opportunity to them to address the Court on the question whether any reconsideration is considered necessary for the purposes of judging whether mens rea has to be established before any penalty can be levied for the alleged violations.

3. Learned counsel for businessmen have submitted that the Hon''ble Supreme Court in the case of Hindustan Steel Ltd. v. The State of Orissa (2), has held that the process of imposing penalty is akin to a proceeding which is quasi-criminal in character and penalty will not be imposed unless the party obliged, acts deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in disregard of its obligation, It has further been held that the penalty will also not be imposed merely because it is lawful to do so, When there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed in the Statute or such entity has believed and such belief is genuine and honest belief, no case for penalty was made out. In the case of Hindustan Steel Ltd. (supra), the Hon''ble Supreme Court ultimately came to the conclusion that it is unable to decide these appeals unless additional statement of facts is brought on record. In fact, though certain observations were made by the Hon''ble Supreme Court but such observations were made in the background, when the Court felt that to enable it to answer the question referred, it is necessary that the Tribunal should be asked to submit the supplementary statement of facts. Thus, the Court was considering the question in absence of complete statement of facts and observations were made broadly. In fact, the case was remanded. Nothing could be decided in absence of the facts required to be submitted. Thus, in view of the Hon''ble Supreme Court's decision in the matter of Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. (3), it would not be prudent to infer that the law has been given final shape in this decision because the matter was remanded back for submitting statement of fact and what happened thereafter, no guidance is available from this decision. The subsequent follow up of the decision has not been brought to the notice of this Court. Thus, the decision of Hindustan Steel (supra), will not be available as a guidance for deciding the question involved in this case because of the reasons stated herein above.

4. Learned counsel for the respondent businessmen has further placed reliance on a Division Bench judgment of this Court in the case of State of Rajasthan and Anr. v. Jinendra & Company, Mandore Road, Jodhpur (4). In this case, the Court decided the question on the basis of an earlier Division Bench judgment rendered in the case of D.P. Metals v. State of Rajasthan. The ratio of this case would not be available for rendering any decision by this Court because the Hon''ble Supreme Court has considered this judgment in an appeal filed against this judgment and has held that the law laid down in D.P. Metals (supra), by the Division Bench cannot be upheld because that proceeded on the premises that Section 78(5) of the Rajasthan Sales Tax Act, 1994 (for short "the Act") was ultra vires of the Constitution. It has been declared by the Hon''ble Supreme Court in the State of Rajasthan and Anr. v. D.P. Metals (5), that Section 78(5) is not violative of the Constitutional provisions. While reversing the question of vires of Section 78(5), the Hon''ble Supreme Court has observed as under :-

"31. Such submission of false or forged documents or declaration at the check-

post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. Hiding the truth and tendering falsehood would per se show existence of mens rea even if required. Similarly where, despite opportunity having been granted u/s 78(5) if the requisite documents referred to in Sub-clause (2)(a) are not produced, even though the same should exist, would clearly prove the guilty intent, It is not possible to agree with the counsel for the respondents that breach referred to in Section 78(5) can be regarded as technical or venial. Once the ingredients of Section 78(5) are established, after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty. If by mistake some of the documents are not readily available at the time of checking, principles of natural justice may require some opportunity being given to produce the same. This provision cannot be read as to imply that the penalty of 30 per cent is the maximum and lesser penalty can be levied. The Legislature thought it fit to specify a fixed rate of penalty and not give any discretion in lowering the rate of penalty. The penalty so fixed is meant to be a deterrent and we do not see anything wrong in this. The quantum of penalty under the circumstances enumerated in Section 78(5) cannot, in our opinion, be regarded as illegal. The Legislature in its wisdom has thought it appropriate to fix it at 30 per cent of the value of goods and it has the competence to so fix. As held by this Court in *Rai Ramkrishna and Others Vs. The State of Bihar*, at 910 : "The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competent of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, courts would naturally be circumspect and cautious" as such there cannot, in the present case, be any valid challenge to the rate of penalty provided for in Section 78(5) of the Act."

5. Learned counsel for the businessmen has further stressed that even in the decision of *State v. D.P. Metals*, the Hon"ble Supreme Court has expressed that the question of mens rea may be there. The question has been left open. But the learned counsel has not carefully gone through the decision of the Hon"ble Supreme Court in the case of *R.S. Joshi v. Ajit Mills Ltd.* (6), wherein the Hon"ble Supreme Court has observed that mens rea is not an ingredient necessary for statutory offences more particularly fiscal statutes. The Hon"ble Supreme Court has observed as under :-

"19. The same connotation has been imparted by our Court too. A bench has held:

"According to the dictionary meaning of the word "forfeiture" the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a

punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of forfeiture."

This word "forfeiture" must bear the same meaning of a penalty for breach of a prohibitory direction. The fact that there is arithmetical identity, assuming it to be so, between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. If this view be correct, and we hold so, the legislature, by inflicting the forfeiture, does not go outside the crease when it hits out against the dealer and deprives him, by the penalty of the law, of the amount illegally gathered from the customers. The Criminal Procedure Code, Customs and Excise Laws and several other penal statutes in India have used diction which accepts forfeiture as a kind of penalty. When discussing the rulings of this Court we will explore whether this true nature of "forfeiture" is contradicted by anything we can find in Section 37 (1), 46 or 63. Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or non-fault liability but must be preceded by mens rea. The classical view that "no mens rea, no crime" has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37 (1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty."

6. Thus, the law relied by the learned counsel for businessmen and submitted for consideration of this Court for making an endeavour to start the process of reconsideration of the judgment rendered in Mutha Premraj (supra), hardly gives guidance in the matter where this Court can feel persuaded to go for yet another exercise to find out whether mens rea is established before levying a penalty.

7. The concept of criminality earlier circled around such incidents which were considered by the society at large to be harmful for the society without there being a codification of such instances. With the codification having come, the law on crimes have been codified in various statutes. In such codifications, such actions of an individual has been made to be liable for imposition of penalty, even when there is no element of voluntary criminal conduct.

8. Earlier, it was thought that a person does not incur any criminal liability unless he voluntarily brings about or recklessly contributes those elements which bring about the crime. Traditionally this concept was expressed in the maxim "actus non facit reum nisi mens sit rea". Thus, came the concept of mens rea incorporated into the happening of the act of a criminal nature wherein intention became an ingredient to be enquired into in cases of criminal liability but in cases of statutory offences, as is the case in question, the delinquency was required to be judged in the face of definition incorporated in the codified language.

9. Statute requiring payment of sales tax in cases of commitment of any kind of default has provided for penalty. Such penalty is prescribed in the statute, where mental condition has been omitted to be prescribed. In the Indian conditions, this omission is intentional and the doctrine of mens rea is not applicable where it is not required in Statute. This has been understood proposition of law that in the matters of criminal acts, mens rea is an ingredient which is looked upon with concern by the courts. But in cases of strict liability statutes, fault has to be judged as has been defined in the statute and if in the language of the statute, the default has been made to be levied with penalty, then searching for means rea would be giving a meaning which is not there in the scheme of things. In a Queen's Bench decision in the matter of Sherras v. De. Rutzen (7), it has been emphasised that "the doctrine of mens rea is an essential ingredient in every offence except in three kinds of cases, (1) cases under criminal in any real sense but which is in the public interest are prohibited under a penalty e.g. Revenue Acts, (2) public nuisance and (3) cases criminal in form but which are really only a summary mode of enforcing a civil right."

10. Thus, it can be seen that in revenue laws, public nuisance and civil rights, mens rea has not been seen to be of greater significance in English Law and there are exception to the rules of mens rea being present. Taxation statute being an Act in the nature of Revenue Act, British Courts too have held that mens rea is not an ingredient which requires to be present when a penalty is imposed in terms of the Statute.

11. Thus, this Court feels that the law laid down in the case of Mutha Premraj (supra), and upheld by the Hon''ble Supreme Court is in no way prone for yet another consideration on the matter.

12. In the cases which have been decided by the decision impugned, there are matters wherein Form ST 18-A was blank altogether and there are matters in which only a part of Form ST 18-A was filled in Learned counsel Mr. Gajendra Maheshwari arguing one of these cases submitted that Form ST 18-A is required to be filled in by the consignor and for the fault committed by the consignor in not filling the form in its entirety, the consignee cannot be penalised. But the argument has a fallacy. The consignor is required to give the form fully filled in to the consignee when the consignment is ordered. This means that the consignee has to see that the form is returned to the transporter with complete details by consignor. This is also because according to learned counsel, the consignee cannot have all the details required to fill the form. Thus, the agent of the consignee (transporter) who delivers the form to the consignor for filling has to see that the consignor returned the form completely filled. The filling up of the form in its entirety was a requirement provided by the statute and violation is thus, sufferable as provided by law.

13. Here, one thing has been asserted very emphatically on behalf of the consignee that the consignment was despatched from Andhra Pradesh, a non Hindi speaking State. The form ST 18 was in Hindi. As per the arguments

submitted in writing, Form ST 18-A had been blank in Col. 3 to 9 and Col. 3 was only ticked. Virtually form ST 18-A was blank in columns 3 to 9 in the case represented" by Shri Maheshwari. In a case decided by this Court in the matter of M/s. Jinendra & Company (supra), it has been noticed by the Court that columns 3 to 9 were not filled by the consignor. The consignor in this case was from Tamil Nadu, a non- Hindi speaking State. This shows that there is some method in not filling the forms in trade practice.

14. The consignor in both cases was a Hindi speaking businessman. He was required to get the form completed in all respects. The consignee being from a non-Hindi speaking State and blanks being available in both these cases, it cannot be said to be accidental, only because of the incident of the consignor being a person from non-Hindi speaking State. In both these States, Hindi speaking personnel are available. Not only this, a large number of the Marwari businessmen have migrated to these places. The people belonging to State of Rajasthan has a sizeable presence in the business circles of both the States. Thus, any difficulty could have been resolved by reference to Hindi speaking persons around. As has been held in the matter of State of Raj. v. D.P. Metals that incomplete documentation shows the intention of the assessee to evade the tax. Such can be seen in this respect in the cases in hand.

15. Thus, there being interpretation of the statutes available in favour of Mutha Premraj (supra), along with the decisions of the various courts referred to herein above, it does not appear to be a case where this Court would feel persuaded to observe that there is a case for reconsideration of the law laid down in Mutha Premraj (supra). Thus, it is held that the law laid down in Mutha Premraj (supra), covers these cases and the liability annulled by the Tax Board has been wrongly done.

16. The judgment of the Tax Board is, therefore, liable to be set aside and consequently set aside. The judgment of the original assessing officer as upheld by the appellant authority is restored.