
(2009) 04 RAJ CK 0035
In the Rajasthan High Court

A.C.T.O., Anti Evasion

APPELLANT

Vs

Power One Micro System (P) Ltd.

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 86

Citation : (2009) 3 RLW 2675 : (2009) 12 Vat Reporter 70 : (2010) 29 VST 10

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This sales tax revision petition u/s 86 of the Rajasthan Sale Tax Act has been filed challenging the validity of the judgment and order passed by the Tax Board, Ajmer dated 17.04.2002 in appeal No. 1334/2000.

2. Brief facts of the case are that the goods in transit Power One Make On Line UPS System 5 KVA being brought by the respondent dealer from Bangalore to Jaipur were intercepted and checked at Ratanpur on Ahmedabad - Udaipur route by the petitioner authority on 04.01.2000. The goods were notified goods, therefore, the same were required to be accompanied by declaration form ST-18A in respect of registered dealer and declaration form ST-18AA in respect of unregistered dealer and other individuals. Since the goods in transit brought by the respondent was not accompanied by declaration form ST-18AA, therefore, as per provisions of Section 78 (2) of the Rajasthan Sales Tax Act, 1994 (hereinafter to be called "the Act"), read with Rule 53 of the Rajasthan Sales Tax Rules, 1995, notice was issued to show cause by the petitioner authority in exercise of power conferred u/s 78 (5) of the Act.

3. The "consignor of the goods M/s. Power One Micro Systems Pvt. Ltd., Bangalore consigned the aforesaid good to consignee M/s Olympia Securities Ltd., Jaipur. The consignee, however, did not choose to contest the matter, therefore, the consignor having interest in the matter appeared before the

petitioner authority and filed reply to the show cause notice in conformity with the provisions of Section 78(6) of the Act. The reply filed by the consignor was taken on record and the petitioner authority being not satisfied with the reply, for the reasons recorded in writing, held the respondent consignor guilty for violation of the provisions of Section 78(2) of the Act and imposed penalty to the tune of Rs. 41,259/- upon the respondent dealer in exercise of the power conferred u/s (5) of the Act vide order dated 12.01.2000.

4. Aggrieved by the aforesaid order dated 12.01.2000, the respondent dealer preferred appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Jaipur. The appeal filed by the dealer was accepted and order of penalty dated 12.01.2000 was set aside vide judgment dated 30.06.2000. Aggrieved by the order passed by the appellate authority, the petitioner department preferred appeal before the Tax Board, Ajmer, The learned Tax Board, however, dismissed the appeal preferred by the department vide judgment dated 17.04.2002 which is under challenge in this revision petition.

5. Learned Counsel for the petitioner submits that the order of the Tax Board is erroneous because the Tax Board has not examined the matter in its entirety and objectivity. As per Section 78(2) of the Act, the goods is required to be carried in the vehicle with record including challan, bilties, bill of sales or dispatch memo and prescribed declaration form in conformity with the provision of Section 78(2) of the Act. Obviously, the declaration form ST-18AA was not produced at the time of inspection, therefore, the penalty was inflicted after considering the reply of the respondent dealer; but, the Tax Board seriously erred in holding that the liability of penalty for not carrying the declaration form cannot be fastened on the consignor because it is the responsibility of the consignee to produce the declaration form. While recording the aforesaid finding the learned Tax Board has totally erred in not appreciating that provisions of Section 78(6) of the Act have totally escaped the attention of the first appellate authority because as per the provision of Section 78(6) during the pendency of the proceedings under Sub-section (5), if nobody appears before the authority and, thereafter, anybody prays for being impleaded as party to the case on the ground of involvement of his interest and after such party having been impleaded, all the provisions of Section 78 of the Act shall apply to such party mutatis mutandis. Therefore, having shown its interest and allowed to contest the matter, upon its prayer for transfer of the goods in its name, the penalty order was rightly passed by the petition, authority in consonance with the provisions of law. Hence, the finding recorded by the leaned Tax Board as well as first appellate authority ignoring the finding given by the petitioner authority in the facts and circumstances of the case is absolutely contrary to law and without jurisdiction. As per learned Counsel for the petitioner the learned Tax Board has not examined this aspect of the matter and without considering the matter in its entirety and objectivity merely recorded ipse digit that without establishing mens ria on the part of the respondent dealer no reasons have been recorded at the time of imposing penalty.

6. It is further argued by learned Counsel for the petitioner that means rix to evade taxes liability on the part of the dealer is not an essential ingredient of constituting offence u/s 78(5) of the Act. Learned Counsel for the petitioner heavily relies upon the judgment reported in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., and contends that the controversy involved in the present case is squarely covered by the cited judgment, in which, the earlier judgment passed in Guljag Industries Vs. Commercial Taxes Officer, has been considered, therefore, the Deputy Commissioner (Appeals), so also, the learned Tax Board committed grave error of law while setting aside the order of penalty passed by the petitioner authority dated 12.01.2000.

7. On the other hand, learned Counsel for the respondent dealer submits that both the authorities below, Deputy Commissioner (Appeals) and learned Tax Board have rightly adjudicated the controversy and have, therefore, rightly quashed the penalty imposed upon the dealer in respect of the goods in transit at the time of inspection. It is submitted by learned Counsel for the respondent that at the time of inspection all the relevant documents were produced except declaration form ST-18AA because at the time of inspection declaration form ST-18AA was issued on 07.01.2000. After obtaining the said ST-18AA declaration form, the same was produced before the petitioner authority along with the reply to the show cause notice; meaning thereby, admittedly, at the time of inspection declaration form ST-18AA was not produced because it was not available at that time; but, later on, when the said declaration form ST-18AA was issued by the Commercial Taxes Department, then, it was produced along with the reply by the respondent dealer. Therefore, it is not a case of tax evasion. More so, due to non availability of the declaration form ST-18AA, it was not produced at the time of checking during transit and there was no intention of the respondent dealer to evade tax liability, therefore, both the orders impugned do not require any interference by this Court and the order passed by both the authorities below may be upheld.

8. I have perused the recent judgment of the Hon'ble Apex Court reported in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , State of Rajasthan and Another Vs. M/s D.P. Metals, , Guljag Industries Vs. Commercial Taxes Officer, , Guljag Industries v. Commercial Taxes Officer.

9. It is true that in the recent judgment in the case of Bajaj Electricals Ltd. (supra), in Para 9, it has been held that declaration form ST-18A or ST-18AA is to be produced at the time of checking and goods can neither be consigned nor sent without declaration form ST-18A or ST-18AA, as the case may be. In Para 9 of the judgment, it has been held as follows:

As a matter of preface, we may state that we have come across a number of matters where the Department has sought to impose penalty u/s 78(2) read with Section 78(5) of the said 1994 Act. It appears that in large number of cases evasion has taken place on account of the importer's (consignee's) failure to fill in Declaration Form ST 18-A. Moreover, in all these cases we found that when

scrutiny takes place declaration form (s) is sought to be produced after incorporating the details required to be given in that form. In all these cases, declaration forms are duly signed but important columns are left blank. Those columns are filled in either when scrutiny begins or at the Stage of investigation/enquiry. It is important to note that these declaration forms are similar to returns under the Income Tax Act. We are not on the veracity of the contents of that form. Our preface is confined to the importer's (consignee's) refusing to supply particulars which they are required to give in the declaration form (s). We have come across numerous cases where columns are left blank. The forms are duly signed. However, relevant Columns are left blank.

10. Similarly, in *D.P. Metals*" case (supra), it has been held that the penalty is livable under two circumstances. Firstly, if there was noncompliance of Section 78(2)(a) of the said Act viz., it was not carrying the documents mentioned in that clause; secondly, if false or forged documents are submitted, then, penalty u/s 75 is livable. After analysing the situation, the Apex Court held that In the case of submission of false or forged documents the authority is entitled to presume motive to mislead the authorities. However, in such cases that presumption was rebuttable by the assessee on producing the requisite documents referred to in Section 78(2)(a). If, by mistake, some of the documents were not readily available, the principle of natural justice might require opportunity being given to produce the same; meaning thereby, if declaration is produced with blank columns, then, presumption can be drawn that there is intention of tax evasion. If, for any reason, any document including declaration form ST-18A or ST-18AA is not readily available at the time of inspection, then, according to principle of natural justice, opportunity can be given.

11. I have considered the facts of the present case. In my opinion, neither of the above circumstances is in existence in the present case because the petitioner authority intercepted and checked the vehicle in question at Ratanpur on 04.01.2000. At that time, notified goods were in transit and obviously declaration form ST-18A or ST-18AA, as the case may be, was to accompany the goods in question. But, in this case, the contingency is that admittedly on 04.01.2000 no declaration form ST-18AA was in existence in favour of the consignee. Admittedly, as per respondent itself, after making all efforts the declaration form ST-18AA was issued on 07.01.2000; meaning thereby, the goods were consigned without any declaration form ST-18AA. The said form was produced along with the reply which is issued on 07.01.2000. In this view of the matter, in my opinion, both the authorities below have committed error while disturbing the finding of the petitioner assessing authority because neither the declaration form was produced at the time of checking nor it was in possession of the consignee on the said date because admittedly the said form was issued on 7.01.2000, subsequent to the date of inspection. Therefore, if the declaration form ST-18AA was not in existence on the date of inspection, then, there was no question of sending goods to the consignee without declaration form. In this view of the matter, therefore, the Deputy Commissioner (Appeals) as well as learned Tax

Board committed error while quashing the order passed by the petitioner authority in consonance with the provisions of the Act.

12. As a result of the foregoing discussion, this revision petition is allowed. Both the order impugned passed by Deputy Commissioner (Appeals) as well as Tax Board are set aside. Finding arrived at by the petitioner assessing authority is upheld.