

(2011) 03 RAJ CK 0052

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 265 of 2008

Acto

APPELLANT

Vs

Eicher Limited

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4, 6(2)
Constitution of India, 1950 — Article 286, 286(1), 323B
Rajasthan Sales Tax Act, 1994 — Section 22A, 22A(7), 78(2), 78(5), 81
Rajasthan Value Added Tax Rules, 2006 — Rule 53, 53(4)

Citation : (2011) 03 RAJ CK 0052

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition has been filed by the Revenue against the order of the Tax Board dtd.6.8.2002 rejecting its appeal against the order of the Dy. Commissioner (Appeals) dtd.8.5.2002 whereby both these Appellate Authorities held that the learned assessing authority was not justified in imposing penalty u/s 78(5) of the Act amounting to Rs. 1,95,019/- on the ground that the declaration in Form ST-18A accompanying the other relevant documents like Sale Invoice, Bill of Entry, Transport Receipt etc. was found blank in respect of column No. 2 to 9 of the said declaration in ST 18A.

2. The learned Tax Board relying upon the decision of this Court in the case of M/s Jitendra and Co. reported in RLW 2000(4) Raj. 69 set aside the said penalty on the ground that since the documents disclosing all the particulars about the columns unfilled in the declaration were available at the time of checking itself, even though the said declaration had a few columns blank, it would be taken as substantial compliance of the statutory provisions of Section 78(2) of the Act and therefore, imposition of penalty was not justified.

3. The first appellate authority, namely, the Dy. Commissioner (Appeals) in his

order dtd.8.5.2002 inter alia also found the goods in question, namely, the motor parts were imported by the Respondent - Assessee from Japan under Bill of Entry for home consumption No. 5587 and 5602 along with Bilty No. 72151 and 72152 dtd.23.6.1999 and the declaration form ST 18A No. 1108/20 and 1108/21 in which columns No. 2 to 9 were found to be blank. A contention was raised before the learned Dy. Commissioner (Appeals) also that on such imported goods from outside the country, namely, Japan, there was no requirement in law to furnish declaration form ST-18A and relying upon the decision of Sales Tax Tribunal in the case of CTO v. Abbas Khan reported in 1998 Tax World 13 the learned Dy. Commissioner (Appeals) also set aside the said penalty.

4. The Revenue being aggrieved by these two orders of the Appellate Authorities in favour of the Respondent - Assessee, has approached this Court by way of present revision petition.

5. The learned Counsel for the Revenue, Mr. R.B. Mathur relying upon the decision of the Hon'ble Supreme Court in the case of Guljag Industries Vs. Commercial Taxes Officer, which is quoted below urged that irrespective of its import of goods from Japan, since the relevant particulars in form No. ST18-A were not filled up by the consignor/consignee of the said goods, the imposition of penalty u/s 78(5) of the Act was justified and the appellate authorities have erred in setting aside the same and the same deserves to be restored by this Court. He, in the alternative submitted that the matter may be remanded back to the learned Tax Board for determining this question. Para 29 of the said SC judgment is reproduced below for ready reference:

29. In fact, the Assessee resorted to the above modus operandi to hoodwink the competent officer at the check-post. As stated above, if the form is left incomplete and if the description of the goods is not given then it is impossible for the assessing officer to assess the taxable goods. Moreover, in the absence of value/price it is not possible for the AO to arrive at the taxable turnover as defined u/s 2(42) of the said Act. Therefore, we have emphasised the words "material particulars" in the present case. It is not open to the Assessee to contend that in certain cases of inter-State transactions they were not liable in any event for being taxed under the RST Act, 1994 and, therefore, penalty for contravention of Section 78(2) cannot be imposed. As stated hereinabove, declaration has to be given in Form ST 18-A/18-C even in respect of goods in movement under inter-State sales. It is for contravention of Section 78(2) that penalty is attracted u/s 78 (5). Whether the goods are put in movement under local sales, imports, exports or inter-State transactions, they are goods in movement, therefore, they have to be supported by the requisite declaration. It is not open to the Assessee to contravene and say that the goods were exempt. Without disclosing the nature of transaction it cannot be said that the transaction was exempt. In the present case, we are only concerned with the goods in movement not being supported by the requisite declaration.

6. Per contra Mr. Vivek Singhal, the learned Counsel appearing for the

Respondent - Assessee vehemently submitted that notwithstanding the production of declaration in the form ST-18A, which was sent by the Respondent - Assessee to its clearing and forwarding agent at Mumbai and which accompanied back the imported goods, namely, the motor-parts from Mumbai to Alwar, the place of business of Assessee of the Assessee, the Respondent - Assessee rightly contended before the learned Dy. Commissioner (Appeals) and again before this Court in the present revision petition filed by the Revenue that requirement of form ST-18A being furnished with such consignment of imported goods from Mumbai to Alwar was not there at all. The contentions of the learned Counsel for the Respondent - Assessee can be summarized thus:

(i) The Petitioner - Commercial Taxes Department of Government of Rajasthan itself has issued a clarification or Circular on 8.2.2001 No. F.1/ST-18/Kar. Niti/ACCT/AE/2001/282 and has clarified that in case of registered dealer of the State, which is also registered with the Ministry of Commerce, Government of India as an importer is not required to enclose Form ST-18A for the goods imported by him from outside the country and such goods under import from outside the country shall not be detained by the concerned authority of the Commercial Taxes Department at the entry check post. The said Circular is quoted below in extenso:

Government of Rajasthan

Commercial Taxes Department

No.F.1/ST18/Kar-Niti/ACCT/AE/2001/282 dated: February 8, 2001

CIRCULAR

Some dealers have represented to the State that in cases of direct import of goods, it is difficult to obtain from Form ST-18A from the exporters. It is clarified that a registered dealer of the State, also duly registered with the Ministry of Commerce Government of India as an importer, is not required to enclose Form ST 18A for the goods imported by him from outside the country. However, such dealer must furnish all the requisite documents in support of import of such goods including the customs clearance certificate, the registration certificate with the Ministry of Commerce as Importer, documents having full description of goods as well as the details of the original foreign consignor.

Goods under transit are accompanied by documents as above, shall not be detained for want of Form ST 18A in the course of checking during their movement in the State as well as the Check-Posts/Document Collection Centres.

These concessions shall not apply to sales diverted u/s 6(2) of the CST Act.

All the Dy. Commissioner (Adm.) shall ensure strict compliance of these directions in their respective zones.

(ii) The learned Counsel for the Assessee, Mr. Vivek Singhal drew the attention of the Court towards Section 81 of the RST Act, 1994 and Rule 53 framed in

exercise of powers u/s 81 of the RST Act, 1994 prescribing the furnishing of said declaration in form ST 18A and submitted that the words "import from outside the State" do not include within its ambit and scope, the direct import of goods from outside the country and it would include import of goods from outside the State of Rajasthan from other States of the Union of India only. Rule 53 as it existed at the relevant point of time in the year 1999 when the goods in the present case were checked by the concerned authority on 27.6.1999 vide notification No. SO 140 dtd.9.7.1998 reads as under:

53. Declaration required to be carried with the goods in movement for import within State:

(1) (a) A registered dealer:

(i) who imports any taxable goods as may be notified by the State Government for sale, except when the goods are the goods of the class or classes specified in the certificate of registration under the Central Sales Tax Act, 1956 of the registered dealer purchasing the goods and are purchased for mining or in generation or distribution of electricity or any other form of power; or

(ii) who receives any goods as may be notified by the State Government, consigned to him from outside the State ; or

(iii) who intends to bring, import or otherwise receives any goods from outside the State, as may be notified by the State Govt., of the value of Rs. 10,000/- or more for use, consumption or disposal otherwise than by way of sale;

shall furnish or cause to be furnished a declaration in form ST 18A completely filled in all respect in ink. The counterfoil of the declaration shall be retained by such dealer and its portion marked "Original" and "Duplicate" shall be carried with the goods in movement.

Section 81 of the RST Act, 1994 reads as under:

81. Import of goods into the State or export of goods outside the State:

(1) Any registered dealer or any other person, who intends to import or bring any goods, or otherwise receives within the State of Rajasthan goods as may be notified by the State Government from outside the State, for sale, use, consumption or for other disposal in the State, shall unless otherwise prescribed, obtain a prescribed declaration form from the prescribed authority, and shall cause it to be carried with the goods as part of the documents specified in Sub-section (2) of Section 78 and produced along with other documents before the In charge of the entry check-post of the State.

(2) Any registered dealer or any other person by whom any goods taxable within the State of Rajasthan are dispatched from within the State to a place outside the State either in the course of inter-State trade or commerce or for sale outside the State, such registered dealer or other person shall, unless otherwise prescribed, furnish or cause to be furnished a prescribed declaration form

obtained from the prescribed authority as part of the documents specified in Sub-section (2) of Section 78, before the In charge of the exit check-post of the State.

Thus, the learned Counsel for the Assessee contended that requirement of furnishing of declaration form ST-18A could not be insisted in the facts and circumstances of the present case and therefore, there is no question of imposition of penalty in the present facts and circumstances and the orders of the Appellate Authorities in favour of the Respondent - Assessee do not require any interference by this Court.

(iii) He also relied upon the decision of Rajasthan Tax Tribunal in the case of CTO v. Abbas Khan reported in 1998 Tax Word 13 in which dealing with the old provisions of Section 22A(7) of the RST Act, 1951 akin to Section 78(5) of the RST Act, 1994, the Rajasthan Tax Tribunal; a Tribunal constituted under Article 323B of the Constitution of India which was vested with the jurisdiction, as was available with the High Court for the period during which the said Tribunal existed, held in para 3 as under:

3. Admittedly, the goods in question were tax paid imported goods. As such they were not taxable under the Rajasthan Sales Tax Act. Therefore, the question of evasion of tax under the RST Act did not arise and the provisions of Section 22A, RST Act were therefore, not attracted. The question of imposing penalty u/s 22A(7) RST Act therefore cannot arise.

(iv) The learned Counsel for the Assessee also relied upon the decisions in the case of Primus Imaging Pvt. Ltd. v. State of Assam reported in (2007)9 VST 528 (Gauhati) and Fr. William Fernandez v. State of Kerala and Ors. reported in (1999) 115 STC 591 (Ker). Relevant portions of the said judgments are quoted below for ready reference:

Primus Imaging Pvt. Ltd.(supra)

On the question whether the State is competent to levy entry tax on goods imported into local area from outside the country:

Held, (i) that levy of tax on sale or purchase of goods and the levy of tax on entry of goods into a local area are covered by different entries in the Constitution and the incidence of taxation in both the cases is different. The restriction imposed by Article 286(1)(b) of the Constitution on the power of the State is in respect of the levy of tax on sale or purchase of goods and not as regards entry of goods into a local area for consumption, use or sale therein and hence the contention that the action of the State Government in imposing entry tax on goods imported from outside the country to the local area is in violation of Article 286(1)(b) of the Constitution of India is misconceived.

(ii) That the language of Section 3 read with Section 2(1)(b) of the Assam Entry Tax Act, 2001 is very clear that the Entry Tax Act provides for levy of entry tax on entry of specific goods into a local area from another local area or from outside the State only and does not provide for levy of entry tax into a local area

from outside the country. In fact, such is not the legislative intent, for Section 3 read with Section 2(1)(b) of the Act excludes goods brought into a local area, in Assam from outside the country in the course of import of such goods into the territory of India. Further a plain reading of Section 2(1) makes it clear that although insurance, excise duty, freight charges, etc., have to be taken into consideration for determination of purchase price, no reference has been made to the customs duty payable for import of the goods. Similarly, the term "importer", as defined in Section 2(1)(d) of the Act, does not take within its sweep a person importing goods from outside the country. Obviously, the Legislature had consciously used the words "including a place outside the State", for, they did not mean to convey outside the country since the distinction between the two is so obvious that this distinction could not have escaped the notice of the law makers. Therefore, tax cannot be levied under the Assam Entry Tax Act, 2001 on goods imported from outside the country into local area.

Fr. William Fernandez v. State of Kerala (1999) 115 STC 591 (Ker) followed.

Fr. William Fernandez v. State of Kerala (supra)

Where the Appellants, non-resident Indians who imported to India motor vehicles they had used abroad, disputed the levy of entry tax in respect of their motor vehicles under the Kerala Tax on Entry of Goods into Local Areas Act, 1994, and filed writ appeals:

Held, that the Kerala Tax on Entry of Goods Into Local Areas Act, 1994 was enacted to provide for the levy of tax on the entry of goods into local areas for consumption, use or sale therein. Clause (d) of Section 2 defines "entry of goods into local area", which means entry of goods from any place outside the State. Obviously, the Legislature was aware when it used the words "from any place outside the State" they did not mean to convey outside the country from abroad since the distinction between them is so obvious as not to have escaped notice. In Clause (n) while defining the purchase value, no reference is made to the customs and other duties that an importer has to pay for clearance of the goods. Obviously to determine the purchase value, customs and other duties are not to be reckoned for the levy of tax under the charging Section 3 of the Act. Moreover there is nothing in Clause (g) to indicate that it takes in a person who imports goods to local areas from abroad. Consequently entry of vehicles brought from abroad is outside the scope of the Act and, therefore, vehicles brought from abroad are not liable to entry tax under the Act.

7. I have heard the learned Counsels at length and given my thoughtful consideration to the relevant statutes and case laws cited at the Bar.

8. The sheet anchor of contention of the learned Counsel for the Revenue, Mr. R.B. Mathur is that para 29 of the judgment of the Hon'ble Apex Court in the case of Guljag Industries v. CTO (supra) quoted above, wherein the Hon'ble Apex Court has observed that for contravention of Section 78(2), the penalty u/s 78(5) is attracted and whether the goods are put in movement under local sales,

imports, exports or inter-State transactions, they are goods in movement and therefore, they have to be supported by the requisite declaration in the form of ST 18A and on the facts of the case, where ST-18A/18C was found to be not duly filled in, the Hon''ble Apex Court held that imposition of penalty u/s 78(5) of the Act was justified.

9. Apparently there is some force in the contention of the learned Counsel of the Revenue. However on a deeper analysis , the aforesaid observations in para 29 of the judgment appear to be an obiter, rather than a law declared by the Apex Court that irrespective of manner how the goods are put in movement, whether under local sales, imports, exports or inter- State transactions, requirement of furnishing ST 18A can be insisted upon. Therefore, it would be unsafe to blindly apply the said observations to the facts of the present case. Firstly, the aforesaid question as raised by the learned Counsel for the Assessee in the present case was neither specifically raised, argued or discussed before the Hon''ble Apex Court in the case of Guljag Industries (supra) nor the Circular issued by the Commercial Taxes Department itself on 8.2.2001 as quoted above was under consideration before the Hon''ble Supreme Court. The said clarification, a contemporary binding interpretation given by the Commercial Taxes Department itself , which would bind the Commercial Taxes Department without doubt, clearly specifies that where the goods in question were directly imported from outside the country like from Japan in the present case, neither the goods not accompanied by the declaration form ST 18A were supposed to be detained nor the requirement of production of form ST 18A was to be insisted upon and such a dealer or importer were required to only furnish all the requisite documents in support of direct import of such goods including the customs clearance certificate, the registration certificate with the Ministry of Commerce as importer, documents having full description of the goods etc. There is no dispute in the present case that other relevant documents establishing such direct import of goods by the Respondent - Assessee from Japan apparently accompanied the said consignment while under transit from port of import, namely, Mumbai to Alwar. The said clarification issued on 8.2.2001, even though the import in the present case was in the year 1999, should be applicable as the clarification on the part of the Department cannot be said to be substantive law which will only have prospective application because by this Circular, the Department itself was clarifying the position of Rule 53 as it existed in the year 1999 at the time of import by the Respondent - Assessee. It is well settled law that procedural amendment or clarifications have a retrospective operation, whereas substantive amendment in law has a prospective operation, unless specifically made to have retrospective operation. In the face of said clarification, it is difficult to reverse the orders of the appellate Authorities below and restore the penalty in question in the light of aforesaid obiter of Hon''ble Apex Court in para 29 in the case of Guljag Industries (supra)

10. Moreover, the aforesaid observations of the Hon''ble Apex Court in para 29 also have to be read in context of observations made in para 24 of the same

judgment, which is also quoted below for ready reference:

24. Form ST 18-A, as quoted above, is in two parts. Part A has to be filled in by the consignee. Part B has to be filled in by the consignor. The nature of the transaction as to whether it is by consignment or by depot transfer or by inter-State sale has to be indicated by the consignee. Similarly, the consignee has to indicate the description of the goods. In the present case, the consignee (the Assessee) has left the requisite columns blank. Part B has to be filled in by the consignor. Part B requires the consignor to give the estimated value of goods. He has also to give invoice number and the date. It is important to note that the declaration form is collected by the consignee from his AO in the State of Rajasthan. The consignee gives an undertaking to get part B filled in by the consignor. Similarly, the consignee gives a declaration that facts stated in part A are true to his knowledge.

In the said para 24, which discussed the contents of form ST- 18A, the Hon''ble Apex Court has discussed only three natures of transactions, namely, consignment, depot transfer or inter-State sales. The direct import of goods from outside the country is not specifically mentioned in para 24 of the said judgment, therefore, requirement of form ST 18A even in the case of direct import from outside the country cannot be inferred from the aforesaid judgment in the case of Guljag Industries (supra) and that is why the observation made in para 29 which includes the words "local sales, imports, exports or inter-State transactions is being taken as mere obiter dicta and not the law declared by the Hon''ble Apex Court.

11. The Hon''ble Apex Court was also not concerned in the said case of Guljag Industries (supra) with the case of direct import of goods from outside the country and from the facts of the said decision in the case of Guljag Industries (supra), it would appear that the goods in question were being imported from the State of Andhra Pradesh to the State of Rajasthan and that is why the question of practical difficulty in filling up the form ST 18A to be filled up by consignor from Andhra Pradesh was raised inter alia including the question of language problem in understanding Hindi language of form ST -18A by the consignor of Telugu speaking Andhra Pradesh. From this angle also, the said observations in para 29 of Hon''ble Apex Court in the case of Guljar Industries (supra) cannot be blindly applied to the facts of the present case as contended by learned Counsel for the Revenue.

12. On the other hand, the decisions relied upon by the learned Counsel for the Assessee quoted above throw light on the question directly involved in the case in hand before this Court. In the case of Primus Imaging Pvt. Ltd. (supra), the learned Single judge of Gauhati High Court while holding that the State Legislature had power to impose entry tax on the goods imported from outside the country while effecting entry of such goods within the State by virtue of Entry 52 of List II of 7th Schedule to the Constitution of India, held that the said Entry Tax could not be imposed in the case of direct import by virtue of Article

286(1)(b) of the Constitution of India, which empowers only the Union Government and not the State Government to enact the law for imposition of tax on the sale or purchase of goods where such sale or purchase takes place (vide clause b) in the course of import of goods into or export of goods out of territory of India. In the said case, elaborating the principles of import of Article 286 and as aforesaid and distinguishing the concept of Entry Tax from the concept of levy of tax on sale or purchase of goods, the learned Single Judge held that the Entry Tax in the said case of import could be imposed by the State Government. However, in view of words "including a place outside the State" used in Section 2(1)(b) of the Assam Entry Tax Act, 2001, the Court held that these words did not mean to convey outside the country and therefore, in case of direct import of goods within the State of Rajasthan, no such entry tax was held leviable. The further relevant part of the said judgment is also quoted below for ready reference:

From a reading of Article 286 of the Constitution, it becomes clear that this Article does not permit States to levy tax on the sale or purchase of goods, which takes place in the course of import into, or export out of the territory of India. The restriction, imposed on the State, is, thus, in respect of levy of tax on the sale or purchase of goods, which takes place in the course of import into, or export out of, territory of India. The power of levy sales tax is derived from Entry 54 List II of the seventh Schedule to the Constitution of India; whereas the power to levy entry is derived by entry 52 of the List II of the Seventh Schedule to the Constitution. Under entry 54, the point of levy is purchase or sale, but under entry 52, the point of levy is the point of entry into a local area. Therefore, taxable event under the Entry Tax Act is entry of specific goods into a local area for consumption, use or sale therein. Viewed thus, it is clear that levy of tax on sale or purchase, on the one hand, and the levy of tax on entry of goods into a local area, on the other, are covered by different entries in the Constitution and the incidence of taxation in both the cases is different. The restriction, imposed by Article 286(1)(b) of the Constitution, is in respect of levy of tax on sale or purchase of goods and not as regards entry of the goods into a local area for consumption, use or sale therein and, hence, the contention of the Petitioners that levy of entry tax on goods imported from outside the State is hit by Article 286(1)(b) of the Constitution of India has no force and is misconceived. This aspect of the law can be examined from yet another angle. Article 286(1)(a) of the Constitution imposes restriction on the power of the State to levy tax on sale and purchase, where such sale or purchase takes place outside the State. Section 4 of the Central Sales Tax Act, 1956 provides as to when a sale or purchase of goods takes place outside the State. Section 3 of the Central Sales Tax Act provides as to when a sale or purchase of goods can be said to have taken place in the course of inter-State trade or commerce. There is no dispute that the State has no power to levy tax, when the sale or purchase of goods takes place in the course of inter-State trade or commerce. When the goods enter into a local area from outside the State pursuant to a sale, the same

amounts to an inter-State sale and purchase and the State has no power to impose levy on such sale or purchase. If the contention of the Petitioners is accepted, then, the State cannot have any power to levy entry tax, on the entry of the goods into any local area from outside the State, which may be brought into the State by virtue of sale and purchase thereof and the same thereby will also be hit by Article 286(1)(a) of the Constitution of India. But since the restrictions, imposed by Article 286, are only on the levy of tax on the sale and purchase of goods, the State is competent to levy entry tax by virtue of entry 52 of List I of the Seventh Schedule to the Constitution of India on the goods imported into any local area from outside the State for use, consumption or sale therein.

In view of what have been pointed out above, there is no merit in the contention advanced, on behalf of the Petitioners, that the State has no power to levy entry tax on the goods imported into any local area from outside the State even if such entry is for the purpose of use, consumption or sale in the local area.

However, while reading the definition of "entry of goods into a local area" as provided by Clause 2(1)(b) of the Assam Entry Tax Act, 2001, it is of paramount importance to note that the expression "entry of goods into a local area" means entry of goods, as specified in the Schedule, into any local area from any place outside the local area including a place outside the State. It is plain that the words "including a place outside the State" do not mean to convey outside the country. No wonder, therefore, that while dealing with the word "purchase value" in Section 2(1)(h) of the Act, no reference has been made to customs and other duties that an importer has to pay for clearance of the goods.

Coupled with the above, it is worth noticing that a plain reading of Section 2(1) makes it clear that although insurance, excise duty, freight charges, etc., have to be taken into consideration for determination of purchase price, no reference has been made to the customs duty that one has to pay for import of the goods. Similarly, the term importer as defined in Section 2(1)(d) of the AET Act, does not take, within its sweep, a person importing goods from outside the country.

Obviously, the Legislature had consciously used the words "including a place outside the State", for they did not mean to convey outside the country since the distinction between the two is so obvious that the distinction between the two could not have escaped the notice of the law makers. A Division Bench of the Kerala High Court, in *Fr. William Fernandez v. State of Kerala* (1999) 115 STC 591, held that the words "from any place outside the State" will not mean outside the country and abroad.

13. Similarly the Division Bench of Kerala High Court in the case of *Fr. William Fernandez v. State of Kerala and Ors.* (supra), which was followed by the learned Single Judge of Gauhati High Court in the case of *Primus Imaging Pvt. Ltd.* (supra) vide aforesaid quoted portion held that entry of vehicle brought from abroad is outside the scope of Kerala Tax on Entry of Goods into Local Areas Act,

1994 and no such Entry Tax could be imposed.

14. Likewise the words used in Section 81 of the Rajasthan Sales Tax Act, 1994 stipulates that any registered dealer or any other person who intends to import or bring any goods or otherwise receives within the State of Rajasthan goods a may be notified by the State Government from outside the State for sale, use, consumption or for other disposal in the State shall unless otherwise prescribed, obtain a prescribed declaration form from the prescribed authority and shall cause it to be carried with the goods as part of the documents specified in Sub-section (2) of Section 78. Under this provisions only, Rule 53 and form ST 18A have been notified by the State Government. This Court is, therefore, inclined to take a view that the words "from outside the State" employed in Section 81 of the Act shall not cover within its ambit and scope "from outside the country". Consequently, Rule 53 which also reiterates these words "from outside the State" cannot go beyond or enlarge the scope of Section 81 of the Act and requirement of Form ST-18A even in the case of direct import from outside the country cannot be inferred merely in view of aforesaid obiter of Hon''ble Apex Court in para 29 of the judgment, particularly, in the face of contemporary clarification issued by the Commercial Taxes Department itself on 8.2.2001 as quoted above which is clearly in support of the Assessee.

15. It was also contended by the learned Counsel for the Respondent - Assessee, Mr. Vivek Singhal that Rule 53 as it now exists in Rajasthan Value Added Tax Rules, 2006 was substituted on 1.5.2008 and prior to 1.5.2008, Sub-rule (4) of Rule 53(4), which is quoted below, specifically required the registered dealer so importing the goods from any place in the country, by any means other than through road transport to submit the declaration in form VAT-47 (like ST 18A) before taking delivery of such notified goods from carrier and to accompany the same from such delivery point up to its own business place. He contended that no such Rule was in force in the year 1999 and therefore, his sending blank form ST 18 to his clearing and forwarding agent at Mumbai and same being inadvertently left blank in columns No. 2 to 9 and accompanying back the goods even though the same was done under misconception of law, cannot result into any benefit to the Revenue or create any estoppels against the Assessee and the penalty (under Section 78(5) of the Act) in question cannot be restored merely on that ground, relying upon the decision of the Hon''ble Apex Court in the case of Guljag Industries (supra). Rule 53(4) read as under:

(4) If the goods are brought into the State from any place in country, by any means other than through road transport such as through railways or airways or any other mode, the registered dealer so importing the goods before obtaining delivery thereof from such carrier, shall submit the original part of Form VAT-47 to the assessing authority or the authorized officer who shall put his seal on the duplicate part of the Form VAT-47 and the same shall be carried by the dealer with the goods after taking delivery thereof from such carrier.

16. This Court also finds considerable force in this submission and therefore,

sending of blank declaration form to the clearing and forwarding agent cannot amount to any acquiescence or estoppels against the Respondent - Assessee contrary to the clarification, circular issued by the Commercial Taxes Department on 8.2.2001.

17. For these reasons, this Court finds no ground to interfere with the impugned appellate orders and the revision petition being devoid of merits is accordingly dismissed. No order as to costs.