(2009) 09 RAJ CK 0041

In the Rajasthan High Court

A.C.T.O. — APPELLANT

Vs

Popular Timber Suppliers — RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(2)

Citation : (2009) 12 Vat Reporter 201 : (2011) 42 VST 221 : (2009) 4 WLN 418

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Heard learned Counsel for the parties.

2. In this revision petition, the Commercial Taxation Department is challenging the order passed by Rajasthan Tax Board, Ajmer dated 17.5.2002, so also the order passed by Dy. Commissioner (Appeals), Udaipur dated 12.3.1999 whereby the Dy. Commissioner (Appeals), Udaipur set aside the assessment order dated 10.10.1997 passed by Asstt. Commercial Taxation Officer, Flying Squad, Banswara and set aside the imposed penalty of Rs. 26,900/-.

3. Upon perusal of the entire record of the case, it is revealed that the Asstt. Commercial Taxation Officer, Flying Squad, Banswara imposed a penalty of Rs. 26,900/- for alleged violation of provisions of Rule 53 of the Rajasthan Sales Tax Rules, 1995 and Section 78 (2) of the Rajasthan Sales Tax Act, 1994. The respondent firm was not having the complete form ST-18-A when the goods were in movement so also the form ST-18-A was time barred. The Assistant Commercial Taxation Officer passed the order on 10.10.1997 but in appeal the same was set aside by the Dy. Commissioner (Appeals), Udaipur on the ground that there is no mem rea on the part of the firm to evade the tax so as to be violative of Section 78(5) of the Act of 1994. Further when the said order passed by the appellate authority dated 12.3.1999 was challenged before the Tax Board, the Tax Board confirmed the order passed by the Dy. Commissioner (Appeals),

Udaipur. The Tax Board passed the said order ex-parte whereby the appeal of the Department was rejected.

4. In my opinion, the controversy involved in this revision petition is squarely covered with the recent judgment of Hon''ble Supreme Court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., of the aforesaid judgment is 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 were columns are left blank. The forms are duly signed. However, relevant columns are left blank.

5. In the instant case, admittedly, the AA made the following assessment order:

lqLi"V lwpuk&i= tkjh djus ds mijkUr Hkh O;olk;h mifLFkr ugh gqvk ftlls Li"V gS fd O;olk;h viuk dksbZ Ik{k ugh j[kuk pkgrk] fuEu vk/kkjks ij /kkjk 78?2? ds izko/kkuksa dh vogsyuk gksuk izekf.kr gS A

1- ST 18A vof/k ikj gksus ls voS/k

2- ST 18A esa fc-ua- ,oa fnukad vafdr ugh A

3- izLrqr nLrkostks ls eq[; dk;kZy; dk irk Kkr ugh gksuk A

4- HkhyokM+k esa ''kk[kk O;olk;h gksus dk dksbZ lk{; miyC/k ugh gksuk

5- okgu dk vksQ :V ij ik;k tkuk A 6- /kkjk 78?4? esa tkjh funsZ''kks dh vogsyuk djuk A /kkjk 78?5? ds vUrZxr vijk/k dkjhr gksus ls /kkjk 78?5? ds vUrZxr fVEcj dheru :- 89667@& ij 30 izfr''kr dh nj :- 26900@& dh ''kkfLr O;olk;h ij vkjksfir dh tkrh gS A ekax i= :- 26900@& dh e; vkns''k dh izekf.kr izfrfyfi ds O;olk;h dks tkjh gks A

6. In the above facts and circumstances of the case, it is abundantly clear that clear violation of Section 78 (2) of the Act of 1994 was made by the respondent and the controversy involved in this case is squarely covered with the judgment in case of ACTO v. Bajaj Electricals Ltd. (supra). Therefore, this revision petition is allowed. The order dated 12.3.1999 passed by Dy. Commissioner (Appeals), Udaipur and the judgment dated 17.5.2002 passed by Tax Board impugned in

this revision petition are hereby set aside and the order passed by AA dated 10.10.1997 is hereby restored.

No order as to costs.

