(2010) 01 RAJ CK 0036

In the Rajasthan High Court

A.C.T.O. (Flying Squad) APPELLANT

Vs

C.D. Motors RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 78

Citation : (2010) 2 RLW 1664 : (2010) 2 WLN 280

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 being aggrieved by the order dtd. 7.12.2008 passed by the Rajasthan Tax Board, Ajmer. While dismissing the appeal of the ACTO, the learned Tax Board upheld the order of the Dy. Commissioner (Appeals) and thus both the appellate authorities set aside the penalty imposed upon the respondent-assessee by the Assessing Authority u/s 78(5) of the Rajasthan Sales Tax Act on the ground that invoice accompanying the goods in transit at the time of checking by the said ACTO showed the goods to be S.T. Paid, whereas according to the said assessing authority- ACTO (Flying Squad), Sri Ganganagar who checked the said goods in transit in accordance with the provisions of Section 78 of the Act, the sale in question amounted to inter-state sale as the seller was of State of Rajasthan and the purchaser was of the State of Punjab, who under the said invoices purchased the said motor spare parts and since no Central Sales Tax was charged in the said invoices, according to the said authority, the same amounted to evasion of tax and thus, the bill found to be not valid or forged in this manner, the penalty u/s 78(5) of the Act was attracted and he imposed penalty of Rs. 2, 11, 680/- on the respondent-assessee-seller of these goods at the rate of 30% of the value of the goods and CST thereon.

2. The appellate authority has set aside the said penalty on the ground that since the sale in question was complete within the State of Rajasthan as the goods

were sold by the respondent-assessee at Sri Ganganagar and merely because the goods were being transported to the State of Punjab by the purchaser, the bill in question issued by the duly registered dealer of the State of Rajasthan cannot be said to be false or forged and thus, no penalty u/s 78(5) of the Act could be imposed upon the respondent-assessee. Being aggrieved by the said order of the appellate authority- Tax Board, the Revenue has approached this Court by way of present revision petition.

3. Mr. V.K. Mathurand Mr. Lokesh Mathur, learned Counsel appearing of the Revenue submitted that since the purchaser belonged to State of Punjab and it was not shown before the assessing authority that the goods in question were not sold in the course of inter-state trade or commence, the Assessing Authority could genuinely believe it to benter-state sale and in absence of any Central Sales Tax charged in the said invoice, the same could not be said to be a valid bill and thus, the penalty u/s 78(5) of the Act was attracted. He submitted that the said penalty was imposed relying on the statement recorded by the assessing authority of the driver of the vehicle on 1.9.2005 at the spot and thereafter the Manager of the respondent-assessee-firm on 9.9.2005 who stated before the said assessing authority that the order for purchase of these motor spare parts was placed by the purchasers of Punjab State and in pursuance of same, they had purchased these goods from Jaipur depot of M/s. Ashok Leyland by sending an order through E-mail on 23.8.2005 and thereafter the goods were sold to the purchaser of the State of Punjab. They supported the order passed by the assessing authority and prayed for allowing of the present revision petition.

4. On the other hand, Mr. Sharad Kothari, learned Counsel appearing for Mr. Dinesh Mehta for respondent-assessee submitted that firstly the sale was complete within the State of Rajasthan and the goods in question were delivered at Sri Ganganagar within the State of Rajasthan only and secondly said spare parts were purchased from Jaipur Depot of M/s. Ashok Leyland and thus, the goods in question became ST paid within the State of Rajasthan and since they were again sold within the State of Rajasthan, invoices in question rightly showed the goods in question to be ST paid goods. He submitted that the contract inquestion with Punjab party was executed within the State of Rajasthan and the goods were delivered Ex-showroom at Sri Ganganagar and merely because the said goods were being shipped or transported by the transporter on behalf of the purchasers of the State of Punjab at the time of checking, the same could not amount to an inter-state sale, when such movement of the goods from the State of Rajasthan to the State of Punjab was not in pursuance of any contract or such inter-state sale, but it was only transportation of the goods after delivery of the same was taken within the State of Rajasthan and the transporter was acting as an agent of the purchaser.

5. The learned Counsel for the respondent-assessee further submitted that the question whether a sale in question was a sale within the State of Rajasthan RST or an inter-state sale attracting CST, was a question for determination beyond

the jurisdiction of Assistant Commercial Taxes Officer (Flying Squad), Sri Ganganagar who was working under the provisions of Section 78 of the RST Act, 1994 under Chapter VIII which provides of checking of goods and documents while in transit only and since he was not a regular assessing authority, such mixed question of fact and law could not be decided by said authority and the scope of his jurisdiction is limited to verifying of the goods with documents, genuineness of which were not prima facie in doubt. He submitted that since the respondent-assessee was regularly registered dealer within the State of Rajasthan at Sri Ganganagar and had sold the goods inquestion in the ordinary course of business as ST paid goods and genuineness of the bills inquestion was not in doubt nor it was a case of the Revenue that there was any other document or declaration required in law, which did not accompany the goods, no penalty u/s 78 (5)of the Act could be imposed on the respondent-assessee and the appellate authorities were, therefore, justified in setting aside the said penalty imposed by the assessing authority u/s 78(5) of the Act and the present revision petition filed by the Revenue did not have any force and the same deserved to be dismissed. He relied on the decision of this Court in the case of ACTO v. Pradam Prabhu Marketing Services reported in (2006) 15 TU 115 in which it was held by this Court that ACTO (Anti Evasion) while checking the goods and vehicles and also the relevant document cannot embark upon such enquiry at all unless there is total wrong declaration of goods and the goods do not tally or identify with the documents accompanying such goods or vehicles and if such a case appears before the Anti Evasions Authority, he can prima facie hold such documents to be false or irrelevant and thereby get a jurisdiction to initiate the penalty proceedings under the aforesaid provisions but if the goods apparently tally or identify with the description given in the documents accompanying such goods and the vehicle, then such Anti Evasion Authority cannot embark upon the enquiry to decide such mixed questions of law and facts on a finer or deeper analysis as to whether the commodity would fall in one entry or the other like in the present case, as to whether it was plastic tapes or cotton tapes as declared by the consignor of the goods in the relevant documents.

6. Having heard the learned Counsels at some length, this Court is the opinion that there is no force in this revision petition filed by the Revenue in the present case. The question as to whether the sale in question is a sale within the State or whether it is an inter-state sale, attracting CST under the provisions of Central Sales Tax Act is a highly debatable question and it is a mixed question of fact and law. The said question exclusively lies within the domain of the regular assessing authority while dealing with regular assessment proceedings. The authority like the present petitioner, namely, ACTO (Flying Squad), Sri Ganganagar while doing the job of checking of goods and prima facie genuineness of the documents accompanying the said goods while in transit is neither vested with the said jurisdiction of assessment nor he can lable the documents accompanying the goods as false or forged merely because in his opinion, the sale in question amounts to inter-state sale and not intra-state sale. There was no dispute from

the side of the Revenue that the respondent-assessee is a regular registered dealer within the State of Rajasthan and is subject to jurisdiction of regular assessing authority. Merely because the purchaser belonged to State of Punjab, he could not conclude on the spot on the basis of statement of driver that he was taking the goods to the State of Punjab under the orders of the seller, that sale in question was an inter-state sale. Assuming for arguments sake that the said authority, namely, ACTO (Flying Squad) came to such prima facie or tentative conclusion that it was an inter-state sale, what he could do at the most, was to make a report in this respect and forward the same to the regular assessing authority of the assessee, who could decide the said question during the course of regular assessment, but the said ACTO (Flying Squad) himself could not do so because this exercise of assessment for deciding such questions is not within the ambit and scope of Chapter VIII containing Section 78 of the Act for checking of goods vehicle in transit.

7. Curiously, in the impugned penalty order, the said assessing authority also states that there was no need of allowing cross-examination of the driver, as statement of Manager of the seller firm also supported the version given by him. It is indeed sorry state of affairs to note that the said assessing authority so concluded in his opinion that the cross-examination of the driver was not necessary, even though the respondent-assessee in his reply repeatedly said that the driver was not authorised to make any statement on behalf of the respondent-assessee firm. The said reply itself is quoted in the impugned order. Such irresponsible authority acting in such reckless and irresponsible manner can do hardly any good to the Revenue Department. The fairness in their action and meeting with the basic principles of natural justice is a sine qua non, even though they be Revenue Authorities meant for collecting Revenue for the State/ This Court in the case of ACTO v. Associated Steel Industries reported in 2006 (15) TU 169 has clearly laid down that it is hazardous to solely reply upon the statement of driver without exercise of cross-examination of such drivers in the provisions u/s 78 (5) of the Act and it is incumbent upon the Assessing Authority to hold such inquiry and undertake the exercise of cross-examination before imposing penalty on either consignor or consignee merely on the basis of statements of driver. This is more so when such statements are contrary to the documents and evidence produced before the Assessing Authority or the contentions raised by the assessee during the course of penalty proceedings u/s 78 (5) of the Act.

8. The very object of checking of the goods and verifying the documents in the said Chapter VIII of the Act dealing with goods in transit is different from regular assessment procedure prescribed in different chapter IV of the said Act of 1994. The said assessing authority acting under the provisions of Section 78 of the Act cannot obviously decide such mixed question of facts and law without adequate hearing to the assessee and giving him an opportunity to place appropriate evidence on record nor they are supposed to take away or curtail the jurisdiction of regular assessing authority in this regard. They are exercising the limited

jurisdiction of verification of documents with goods and the penal proceedings under that Chapter VIII of the Act. Therefore, apparently such ACTO (Flying Squad) could not go into this question at all. Moreover, since identity and existence of the respondent-assessee, a duly registered dealer was not in doubt, the bill in question could not be held to be false or forged merely because they showed the goods to be ST paid, whereas in the opinion of the said authority, it was a case of inter-state sale attracting CST, rather than a sale within the State of Rajasthan attracting RST which stood duly paid and thus the goods were shown to be ST paid.

9. Consequently, the Tax Board cannot be said to have erred in allowing the appeal of the respondent-assessee and set aside the penalty order in question.

10. There is no force in this revision petition filed by the Revenue and the same is accordingly dismissed. No order as to costs.

