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**(2009) 04 RAJ CK 0012**  
**In the Rajasthan High Court**

A.C.T.O., Flying Squad

APPELLANT

Vs

Derby Textile Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 28-04-2009

**Acts Referred:**

**Citation :** (2009) 12 Vat Reporter 74 : (2010) 27 VST 363

**Hon'ble Judges :** Gopal Krishan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Gopal Krishan, J.—By this revision petition, the Assistant Commercial Taxes Officer, Flying Squad, Jodhpur is challenging the judgment passed by the Rajasthan Tax Board, Ajmer dated 10.5.2000 in Appeal No. 92/97/ST/Jodhpur, so also, the order passed by the Deputy Commissioner (Appeals) dated 2.9.1996, whereby, the learned Tax Board, Ajmer upheld the order passed by the Deputy Commissioner (Appeals) dated 2.9.1996, whereby, the said authority quashed and set aside the order passed by the AA dated 3.2.1995 by which penalty of Rs. 15,600/- was imposed upon the respondent company.

2. Brief facts of the case are that the goods in question was travelling in truck No. GJ-9/T-5438 from Bombay to Jodhpur and it was carrying 10 electric motors. At the time of checking physical verification was made by the ACTO, Flying Squad, Jodhpur and it was found that the goods were not accompanied by bill or bilty of the goods carried in the vehicle nor it was shown in the monetary form ST 18A. In such circumstances, a show-cause notice was issued by the AA to which reply was filed by the non-petitioner assessee; but, it was not found satisfactory, therefore, the AA imposed penalty as indicated above u/s 22-A(7) of the Act of 1954. Against aforesaid order passed by the AA, the assessee preferred appeal before the Dy. Commissioner (Appeals), Jodhpur which came to be decided on 2.9.1996, in which, it was held that there was no mens rea on the part of the assessee for evading tax liability. The Dy. Commissioner (Appeals), Jodhpur set aside the order passed by the AA vide judgment dated 2.9.1996.

Thereafter, being aggrieved by the judgment dated 2.9.1996, second appeal was preferred by the department before the learned Tax Board, Ajmer. Learned Tax Board, Ajmer upheld the order passed by the first appellate authority. Hence, this revision petition.

3. While challenging both the orders, learned Counsel for the petitioner vehemently argued that both the orders passed by the authorities below speak that there is no examination of the matter in its entirety and objectivity. The relevant material on record has altogether been ignored which is evident from the fact that documentary report and reply submitted by the respondent company, it was manifestly clear that the goods in transit were not accompanied by the requisite documents as required u/s 22A of the Act of 1954 at the time of physical verification of the goods. Therefore, the AA imposed the penalty which is in accordance with Section 22A of the Act of 1954.

4. Further, it is argued that the authorities below have seriously erred in interfering with the order passed by the AA because no reasons for interfering with the order passed by the AA have been incorporated in the order. Likewise, the learned Tax Board has committed serious error which is apparent on the face of record that the finding of fact arrived at by the AA has not been considered properly. Therefore, the orders passed by both the authorities below are perverse and illegal and are liable to be quashed.

Per contra, learned Counsel for the respondent vehemently argued that the facts stated in the revision petition are far from truth because upon perusal of the order passed by the AA itself it is obvious that after physical verification the bill and bilty of 10 electric motors were produced and there is requirement of provisions of law to submit form ST18A. Learned Counsel for the respondent has invited my attention towards Rule 62A(3) of the Rules of 1955. It is submitted by learned Counsel for the respondent that the respondent is manufacturer of cotton thread and. for the purpose of manufacture/production of cotton thread, these electric motors were purchased for generating electricity. For such type of commodity, as per Rule 62A (3) of the Rules of 1955, there is no requirement of declaration form ST18A. The said commodity which is electric motors were purchased by the respondent for the purpose of manufacture/production and not for sale.

5. As per learned Counsel for the respondent, the contention of the respondent dealer was accepted by the Dy. Commissioner (Appeals) on the ground that at the time of physical verification though the said bilty was not produced before the check-post, but, at the time of inspection, it was produced; meaning thereby, there was no intention to evade the tax liability. Learned counsel for the respondent contended that the second appellate authority has also upheld the order passed by the Dy. Commissioner (Appeals) dated 2.9.1996, in which, there is no illegality and concurrent finding of fact does not require any interference. Learned Counsel for the respondent also argued that for a meagre amount of Rs. 15,600/- this revision petition has been filed by the revenue which is not

justifiable.

6. I have carefully considered the rival submissions and perused the relevant provisions of law. Proviso to Rule 62A(3) reads as follows:

Provided that Form S.T. 18A need not to be furnished if the goods are goods of the class or classes specified in the certificate of registration under the C.S.T. Act, 1956 of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power.

7. Upon perusal of the above provision, I am of the opinion that no error has been committed by both the authorities below while setting aside the order passed by the AA because, at the time of physical verification, bill and billty of 10 electric motors were produced for perusal and according to proviso to Rule 62A(3), for the goods which is purchased for production there was no requirement of declaration form ST18A. In this view of the matter, it is obvious from the facts of the present case that electric motors were purchased and were in transit for the purpose of generating electricity for manufacturing thread, therefore, there is no illegality in the orders impugned which may give rise to any question of law to be decided by this Court. Moreover, the question of mens rea is totally irrelevant in this case.

In that view of the matter, the judgments cited by learned Counsel for the petitioner, reported in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., are not applicable in this case because, here in this case, both the authorities below set aside the order passed by the AA for the reason that goods purchased were required by the respondent dealer for generating electricity to manufacture thread and there is exemption provided under proviso to Rule 62A(3), therefore, in this matter there was no requirement of declaration form ST18A. Hence, this sales tax revision petition is dismissed.