
(2013) 09 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 73 of 2012

ACTO (FS) Sriganagar

APPELLANT

Vs

M/s. Bunge India Pvt. Ltd.

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 86

Citation : (2014) 70 VST 49

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : V.K. Mathur and Mr. D.K. Godara, for the Appellant; Pankaj Kumar Bohra and Mr. Neeraj Kumar Jain, for the Respondent

Judgement

P.K. Lohra, J.—The petitioner has preferred this revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 (for short referred to as the Act of 1994) assailing the impugned judgment and order dated 18.8.2011, passed by the learned Tax Board, Ajmer. Succinctly stated the facts giving rise to this petition are that the competent authority checked the goods vehicle bearing No. RJ 18/G-0075 on 17.2.2005 at Check Post, Ratanpura, wherein it was found that Dalda Refined Soyabin Oil and Dalda Vanaspati was being transported from Bundi to Punjab. The Assessing Authority after taking into account the documents submitted at the time of checking felt satisfied that the nature of transaction is not a consignment of goods as stock transfer, simpliciter and found that the same is a inter-state sale of goods. The conclusion was drawn by the Assessing Authority on examining the details mentioned in the documents.

2. Considering all these facts and circumstances, the Assessing Authority concluded that the assessee has contravened the Section 78(2) of the Act of 1994, and by the assessment order dated 2.3.1995, imposed penalty against it.

3. Appealed from the order of Assessing Authority, the respondent assessee laid an appeal u/s 84 of the Act of 1994, before the Dy. Commissioner, Appeals, Commercial Taxes, Kota and the said appeal was allowed by the Appellate

Authority vide its order dated 22.2.2008.

4. Feeling disgruntled from the order of the Appellate Authority, the petitioner-Revenue approached the learned Tax Board by way of preferring an appeal u/s 85 of the Act of 1994. The learned Tax Board fully concurred with the order passed by the Appellate Authority and dismissed the appeal of the petitioner-Revenue vide its impugned judgment and order dated 18.8.2011.

5. Learned counsel for the petitioner has argued that at the time of checking of the vehicle, original documents were not available and, as such, the Assessing Authority has rightly concluded that it was not a case of stock transfer, but in fact it was a transaction in the nature of inter-state sale, and as such, there was a clear violation of Section 78(2) of the Act of 1994. Mr. Godara, learned counsel for the petitioner submits that once it is established that Section 78(2) is violated, imposition of penalty is mandatory by virtue of Section 78(5) of the Act of 1994, and this vital aspect has not been appreciated by the learned Tax Board, which is a question of law, requiring adjudication by this Court, in exercise of revisional jurisdiction.

6. Per contra, learned counsel for the respondent Mr. Neeraj Kumar Jain has urged that the learned Tax Board has examined the matter threadbare and while relying on a decision of Hon'ble Apex Court, has dismissed the appeal of the petitioner-Revenue which calls for no interference in exercise of revisional jurisdiction of this Court. Mr. Jain further submits that the finding of fact recorded by the First Appellate Court, as well as by the Tax Board is based on proper appreciation of the evidence and other materials on record, cannot be faulted & as such there is no question of law involved in the matter, requiring adjudication by this Court. In support of his contentions, learned counsel for the respondent assessee has placed reliance on a decision of this Court in case of ACTO Vs. Juharmal Badri Lal, In the said verdict, this Court while examining the true purport of Section 78(2) and 78(5) has held in clear and unequivocal terms that the competent authority before imposition of penalty is required to hold proper enquiry in the matter. The Court has further concluded that imposition of penalty u/s 78(5) is essentially a finding of fact, which cannot be made subject matter of judicial review in exercise of revisional jurisdiction of this Court. The Court has made following observations in para 11 to 13 of the verdict:

11. Once the relevant and prescribed documents as prescribed u/s 78(2) of the Act quoted above namely Bill and Bilty are found, unless these documents are found to be false or forged, the imposition of penalty u/s 78(5) of the Act, cannot be justified. Such admission or representations made before the assessee at that moment, but it does not absolve the assessing authority to hold enquiry into the matter and objectively arrive at the conclusion that either the prescribed documents are not available or the produced documents are false or forged. Such hasty self serving admissions are nothing better than admission of guilt before the policy authorities, which are not even admissible in evidence. They may be made under fear or undue influence of authorities, even by not

specifically authorized persons on behalf of the assessee or may be made as self serving admissions to get over with the lengthy proceedings. Had it been end of the matter for the assessing authority with such admissions being conclusive proof of guilt of evasion of tax, very purpose of need to hold enquiry u/s 78(5) of the Act would be defeated. It is not the intention of Legislature to let such loose ends in penal provisions like Section 78(5); therefore, authorities cannot be let free to impose penalty, without holding proper enquiring in the matter. Without this kind of enquiry, the imposition of penalty u/s 78(5) of the Act, cannot be justified because ultimately what is being imposed by the Assessing Authority is a penalty and not a tax which is imposed by virtue of charging provisions of a taxing enactment read with relevant Notification of rate of tax. In imposition of penalty, the existence of guilty animus is essential and in arriving at the findings of the same, holding of enquiry by the assessing officer is a sine qua non.

12. On the aforesaid facts, the appellate authorities particularly, the learned DC (Appeals) who also appears to have gone into the record of the case in detail, found that the issuance of second bill bearing, hand written No. 940 was a clerical and inadvertent mistake and since a regular bill bearing printed No. 943 along with the Bilty for the same goods was also found with the same goods, the requirements of Section 78(2) of the Act were satisfied and, therefore, no penalty u/s 78(5) of the Act could be imposed. Agreeing with the said decision of the learned DC (Appeals), the Tax Board also came to the similar conclusion.

13. This Court is of the clear opinion that no case of imposition of penalty u/s 78(5) of the Act was made out in the present case and it is essentially a finding of fact, if the authorities in he hierarchy, choose in their discretion, not to impose the penalty u/s 78(5) of the Act. Therefore, it may not even give rise to a question of law arising out of the order of the Tax Board as required by Section 86 of the Act. Secondly, the facts of the present case clearly indicate that the prescribed documents are prescribed in Section 78(2) the Act namely bill and ability relating to the goods found at the time of checking in transit were admittedly there. There is no finding nor even an allegation against the assessee that these documents were false or forged. The mere presence of a duplicate bill bearing hand written No. 940 giving the same quantity and description of the goods cannot per se lead to any inference of the said document by itself being false or forged or even rendering the other documents false or forged in any manner. Without holding a proper enquiry into the matter after affording an opportunity of hearing to the assessee in this regard, which is the mandate of the law, no such inference or finding could be arrived at by the Assessing authority which could provide the foundation for imposition of penalty u/s 78(5) of the Act.

7. I have heard learned counsel for the parties and perused the materials on record. On close scrutiny of the matter, in my considered opinion, when the documents were available at the time of checking, without making enquiry about the genuineness of documents, so as to conclude that these are spurious or false

documents, obviously it was not desirable from the Assessing Authority to conclude that it is a case of violation of Section 78(2) of the Act of 1994. Therefore, in these circumstances, invoking the provisions contained u/s 78(5) for imposition of penalty is obviously out of question. In this view of the matter, law laid down by this Court in Juharmal Badri Lal's case (supra) in my considered opinion is fully applicable in the facts & circumstances of the instant case. Thus, no question of law is involved in this revision petition, and consequently, no interference with the impugned order passed by learned Tax Board is warranted. The net result of the above discussion is that there is no force in the revision petition, the same is accordingly dismissed.