(2013) 07 RAJ CK 0008

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 203 of 2010

Assistant Commercial Tax Officer — APPELLANT

Vs

Mahindra Met Plast (P.) Ltd. — RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(5)

Citation : (2014) 43 GST 315 : (2014) 70 VST 290

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Tanvi Sahai and R.B. Mathur, for the Appellant; T.C. Jain, for the Respondent

Judgement

J.K. Ranka, J.—Instant revision petition has been filed by the petitioner-Assessing Officer assailing the order dt. 09/07/2007 passed by the Rajasthan Tax Board (for short, "Tax Board") by which the Tax Board, while dismissing the appeal of the petitioner-Assessing Officer, has upheld the order dt. 10/05/2005, passed by the Deputy Commissioner (Appeals) (for short, "DC(A)") by which the DC(A) has deleted the penalty to the tune of Rs. 66,503/- imposed upon the respondent-assessee by the petitioner-Assessing Officer u/s 78(5) of the Rajasthan Sales Tax Act. Brief facts, as emerging from the face of record, are that on 05/06/2003 the vehicle bearing No. HNG-0556 was intercepted near ''Rathi Bas Road'' check post wherein aluminum scrap was loaded in the vehicle. On demand, the driver of the vehicle produced the bill according to which the goods were being transmitted from Delhi to Bhiwadi. The bill was issued by one M/s. Vinay Metal Industries, Delhi in favour of the respondent-assessee, though the bill is dt. 04/06/2003 but major discrepancy was noticed by the Anti Evasion Wing that there was no bill number either printed or hand written and apparently came to the conclusion that the bill appears to be forged and fabricated as even the bill number is not written on it. Accordingly, a notice was given and one Shri Manoj Kumar Sharma, Supervisor of the respondent-assessee appeared, gave a written reply and despite giving ample time to the Supervisor/representative of the respondent-assessee to produce books of account and bill books etc., he showed his inability to produce the same and it was admitted that non-mentioning of bill number on the bill is a mistake, he, however, requested for closing the case after levying the penalty and releasing the goods. Accordingly, the petitioner-Assessing Authority, in view of the aforesaid admission/ submissions made by the Supervisor/representative of the respondent-assessee, imposed a penalty of Rs. 66,503/- upon the respondent-assessee.

2. Dissatisfied with imposition of the said penalty, the respondent-assessee preferred an appeal before the DC(A), who, vide order dated 10/05/2005 deleted the penalty mainly in view of the fact that before him the photostat copy of the bill books were produced and according to the DC(A), there appears to be no case of evasion of the tax as the goods were under sale on "C" form and, therefore, it was tax paid and accordingly deleted the penalty.

3. Dissatisfied with deletion of the said penalty, the matter was carried in appeal before the Tax Board by the petitioner-Assessing Officer. The Tax Board upheld the findings of the DC(A) and affirmed the order vide order dt. 09/07/2007. Hence this revision petition by the petitioner-Assessing Officer.

4. Ms. Tanvi Sahai on behalf of Mr. RB Mathur, counsel for the petitioner-Assessing Officer submitted that it is a case where the penalty was rightly imposed by the petitioner-Assessing Officer. She submitted that how the goods can be transmitted without bill number and non-mentioning of the bill number on the bill shows that the bill itself was forged and fabricated and by no stretch of imagination, any authority could have accepted such a bill to be correct. She further submitted that the petitioner-Assessing Officer gave ample time to the representative of the respondent-assessee to produce the bill books and other supporting books and vouchers for further verification and satisfaction but the representative admitted the guilt and showed inability to produce the relevant books of account and not only that it was agreed that the mistake was there and even requested for imposition of penalty and closing the case and releasing the goods. So, on the face of it, what more was required when even the representative accepted that non-mentioning of the bill number was a mistake and even admitted about imposition of the penalty. She submitted that ample time was granted but the representative insisted about imposition of penalty and closing of the case. She further submitted that no credence can be placed on the photo copies, allegedly produced before the DC(A). She submitted that the DC(A) ought not to have accepted the appeal merely on production of some alleged photocopies. She submitted that when time was allowed why the books were not produced before the petitioner-Assessing Officer and why produced before the DC(A) when the petitioner-Assessing Officer was the first authority to be satisfied. She further submitted that even if at all these were produced before the DC(A), then the matter ought to have been remanded by the DC(A) rather than merely admitting the contents of the photocopies and only on this basis deleted the penalty. She submitted that it is merely mentioned by the DC(A) that

by not mentioning bill number on the bill, it does show the intention of the respondent-assessee of evading the tax. She further submitted that there is no reason at all to come to such a conclusion and to delete the penalty. She further submitted that not only this, even the Tax Board was unjustified in mechanically following and affirming the order passed by the DC(A) when there was clear admission by the representative of the respondent-assessee. She further submitted that can anyone sell and purchase goods without bill number and if that be so, then sanctity would be lost of even producing the bill. She submitted that such a bill has no sanctity and was rightly held to be forged and fabricated. Accordingly, she requested for reversal of the orders impugned.

5. Mr. TC Jain, learned counsel for the respondent-assessee, on the other hand, submitted that both i.e. the DC(A) as well as the Tax Board have come to the correct conclusion about the fact that the sale was against "C" form which clearly shows that it was tax paid and there is no case of evasion of tax. He submitted that merely because the bill number was not mentioned, it cannot be said to be a defect particularly in view of the fact that the penalty has been imposed while something more was required to be proved by the petitioner-Assessing Officer. He further submitted that DC(A) as well as the Tax Board were satisfied that all the entries are duly recorded and rightly came to the conclusion about deletion of the penalty. He submitted that basically it is a finding of fact and no question of law emerges. He further submitted that no clarification was sought from the seller of the goods and, therefore, without clarification/enquiry, no penalty could have been imposed and the duty of the petitioner-Assessing Officer was to verify from the seller about the discrepancy, if any. He further submitted that the case is squarely covered by the judgment of this Court in the case of Bhagirath Bishnoi Vs. State of Rajasthan and Others, and ACTO, FS Raniwa Jalore v. Agarwal Plywood Industries (2012) 32 Tax UP 243.

6. In rejoinder, counsel for the petitioner submits that ample opportunity was granted to the respondent-assessee and the respondent did not avail of any opportunity and on the contrary, it agreed with imposition of penalty and she submitted that even the DC(A) was unjustified in admitting the appeal when, on the one hand, the penalty was agreed, then what was the occasion of filing of appeal. She submitted that even the DC(A) was not at all justified in admitting the appeal when it was an admitted case before the petitioner-Assessing Officer. Accordingly, she requested for reversal of the orders impugned passed by the authorities below. Both the counsels agreed that this revision petition may be disposed of finally.

7. I have considered the submissions made by counsel for the parties and I am convinced with the submissions advanced by learned counsel for the petitioner-Assessing Officer mainly in view of the fact that despite of ample opportunity having been granted, the petitioner-Assessing Officer to the representative of the respondent-assessee, it did not produce the necessary bill books and books of account for satisfaction or verification of the petitioner-Assessing Officer and on

the contrary, requested that the matter may be closed. The representative of the respondent-assessee admitted the mistake, requested for imposition of penalty then and there and requested for payment of even penalty amount and requested for release of the goods. On the face of it, when there was clear cut admission by the representative of the respondent-assessee, in my view, nothing more was required to be proved by the petitioner-Assessing Officer. Secondly, when ample opportunity was granted by the petitioner-Assessing Officer to satisfy him by production of books of account and supporting material and if such an opportunity was not availed by the respondent-assessee, then the petitioner-Assessing Officer cannot be said to be faulted with. It was for the respondent-assessee to satisfy the petitioner-Assessing Officer about the discrepancy, if any. If the respondent-assessee objected, then possibly, in my view, the petitioner-Assessing Officer was duty bound to get the things verified from the seller but in a case like this when the representative of the respondent-assessee accepts the mistake and requests for closing the case, then according to me, nothing remained to be proved by the petitioner-Assessing Officer, After imposition of penalty, enquiry from seller looses significance and it could be significant had request was made by the respondent-assessee. I am also not satisfied with the way and manner in which the so-called photocopies were placed on record before the DC(A) and without any demur treated to be correct by him. On the other hand, the representative of the respondent-assessee showed inability to produce the books of account before the petitioner-Assessing Officer but conveniently produced the books of account before the DC(A) and the DC(A), in my view, ought not to have admitted this additional evidence without at least providing an opportunity to rebut by the petitioner-Assessing Officer or if the DC(A) was satisfied about such photocopies, then the case ought to have been remanded back to the petitioner-Assessing Officer for satisfaction. It is also noticed that even before the DC(A) only some photocopies have been produced and not even the supporting books, bills and other vouchers and even the DC(A) simply mentions by deleting the penalty that merely by not mentioning bill number on the bill, it does seem the intention of the respondent-assessee of evading the tax. In my view, non-mentioning of bill number on the bill is a major defect/ discrepancy which cannot be simply brushed aside. If bill number is not there, then both i.e. the purchaser as well as seller can manipulate the things in the way, they want. The DC(A) was not proper in deleting the penalty. I am also of the view that when on one hand, the imposition of penalty was agreed/admitted by the representative of the respondent-assessee, then how penalty could have been challenged even by the respondent-assessee. In my view, the Tax Board has also simply followed the order of the DC(A) without coming to a definite finding and also has simply mentioned that there was no intention of evasion of tax, in my view, the Tax Board is also unjustified in arriving at a finding that by not mentioning bill number on the bill, it does not prove evasion. The Tax Board is the final fact finding body and it ought to have come to a definite finding. Secondly, how the Tax Board agreed with the finding of the DC(A) that the photo copies of books produced by the respondent-assessee before the DC(A) were correct when before the petitioner-Assessing Officer, it was avoided to be produced. The authorities cited by Mr. TC Jain, learned counsel for the respondent-assessee are distinguishable on facts because in the case of Agarwal Plywood Industries (supra) this Court observed about the enquiry but when the mistake was admitted and penalty was admitted by the respondents, then according to me, making enquiry looses its significance. Accordingly, in my view, the petitioner-Assessing Officer was justified in imposing the penalty and the orders impugned passed by both the appellate authorities deserves to be reversed. Consequently, the revision petition stands allowed. The orders impugned dt. 09/07/2007 passed by the Tax Board in Appeal No. 661/2006 as well as the order dt. 10/05/2005 passed by the DC(A) are hereby quashed and set aside and the order dt. 06/06/2003 passed by the petitioner-Assessing Officer is sustained. No order as to costs.