(2013) 08 RAJ CK 0040

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 393 of 2008

Assistant Commercial Tax Officer — APPELLANT

Vs

M/s. H.C.L. Infosystems Limited and Another — RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

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

Citation : (2014) 69 VST 84

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

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of Mr. R.B. Mathur, for the Appellant;

Judgement

J.K. Ranka, J.—Instant revision petition has been filed by the petitioner-department being aggrieved by the order of the Tax Board by which the Tax Board, while rejecting the revenue''s appeal, upheld the order passed by the Deputy Commissioner (Appeals) and thus both the appellate authorities below held that the penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 could not be imposed on the respondent-assessee, if the declaration form ST 18-A prescribed under Rule 53 of the RST Rules read with Section 81 of the Act was found blank or not completely filled up, if other supporting bills, vouchers, documents found at the time of checking of the goods like sales book, transport etc. were found in order. Counsel for petitioner submitted that the Hon''ble Apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, and Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., has decided the controversy in favour of the revenue-petitioner and accordingly this revision petition deserves to be allowed.

2. The Hon''ble Supreme Court in the case of Guljag Industries (Supra) held that object behind enacting Section 78(5) is to emphasis loss of revenue and to provide a remedy for such loss. Section 78(2) is a mandatory provision and goods put in movement under local sales, imports, exports or inter-State transactions have to be supported by requisite declaration. The Hon''ble Apex Court reproduced Rules 53 and 54 of the Rajasthan Sales Tax Rules, 1995 (for

short, ''the Rules'') and the prescribed form of declaration in Forms ST-18-A and 18-C with its contents to be filled in by consignor and consignee. It is noticed that the said judgment is basically confined to cases where blank/incomplete form ST-18-A/18-C had accompanied the goods in movement. It was found that in the appeal of Guljag Industries lead case the goods in movement were carried with blank declaration form and though dated and signed by the consignee but the material particulars like quality, weight and description of the goods were left blank. It held that declaration given by the consignee is meaningless. It observed "if the form is left incomplete and the description of the goods is not given, then it is impossible for the assessing officer to assess the taxable goods. Moreover, in the absence of value/price, it is not possible for the assessing officer to arrive at a taxable turnover as defined u/s 2(42) of the said Act. The Hon''ble Court further referred to the judgment in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, where it has been observed "If by mistake some of the documents were not readily available at the time of checking, the principles of natural justice might require opportunity being given to produce the same" and distinguished on facts. In ultimate analysis, the Hon''ble Court stated "in the light of our judgment, we direct the Department to dispose of the cases in accordance with law enunciated by us. It also held that mens rea is not an essential ingredient for contravention of Section 78(2) of the RST Act, 1954 and breach of Section 78(2) would attract levy of penalty u/s 78(5) of the RST Act, 1954 in cases where goods in movement have travelled with an incomplete form No. 18-A/18-C. Accordingly, it directed the department to dispose of the cases in accordance with law enunciated in the said case.

3. It is noticed that thereafter, this Court, considering all the facts and circumstances and the judgments, has expressed that principles of natural justice have to be followed and accordingly this Court in the case of Commercial Taxes Officer Vs. M/s. Jain Tubes, reported in (2011) 30 Tax Update 125; ACTO Vs. Hariom Company, reported in 2011(30) Tax Update 285 and so also the judgment of this Court passed in the case of Assistant Commercial Taxes Officer Vs. M/s. Madhusudan Soap Udyog & anr., SB Sales Tax Revision Petition No. 151/2011, decided on 09/05/2013 has remanded the matter back to the Assessing Officer to provide an opportunity afresh and consequently, the respondent herein also deserves to be allowed opportunity of fresh hearing in the light of the law enunciated by the Hon''ble Apex Court (supra) in the case of Guljag Industries.

4. Consequently, in the light of the above facts and circumstances and in the light of the judgments, (supra) this revision petition is partly allowed. The orders impugned passed by the authorities below namely; the Tax Board, Deputy Commissioner (Appeal) as well as Assessing Authority are quashed and the matter is restored back to the Assessing Authority for deciding the penalty proceedings afresh and de-novo in the light of the law enunciated by the Hon''ble Apex Court in the case of Guljag Industries (supra) and after examining the material particulars filed in the declaration form 18-A/18-C and afford adequate

opportunity of being heard to the dealer/assessee. The assessee deserves afresh opportunity of hearing and specific show cause notice with the nature of defects and deficiencies in compliance of Section 78(2) of the Act. Since considerable time has already expired, therefore, it is expected that Assessing Authority will pass such fresh orders after giving opportunity of hearing to the assessee (respondent) within a period of six months from today. A copy of this order be forwarded to respondent-assessee as well as the Commissioner of Commercial Taxes for expeditious compliance.