(2010) 11 RAJ CK 0024

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 477 of 2008

Assistant Commercial Tax Officer, Flying Squad, Alwar — APPELLANT

Vs

Electrolux Kelvinator Ltd. and another — RESPONDENT

Date of Decision : 26-11-2010

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

Citation : (2012) 50 VST 519

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the petitioner. Vehicle No. DL-1L/B-6896 was checked by the assessing officer near Shahjahapur Check-post. On production of documents, it was found that declaration form ST 18A was not accompanied with the vehicle/goods. The assessing officer issued show-cause notice to the assessee as to why penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as, "the Act of 1994") may not be levied. The assessee filed reply to show-cause notice wherein it was contended that the goods in question were not for the purpose of sale, therefore, declaration form was not required, however, the assessee also submitted declaration form ST 18A along with reply to show-cause notice. The assessing officer was of the view that declaration form should have been accompanied with the vehicle/goods, therefore, there was a breach of section 78(2) of the Act of 1994 and consequently, vide order dated April 8, 1999 levied of penalty u/s 78(5) of the Act of 1994.

2. Being aggrieved with the assessment order, the assessee preferred an appeal, which was allowed by the Deputy Commissioner (Appeals) vide order dated November 24, 2005, on the ground that since the declaration form had been submitted by the assessee before the assessing officer before passing of

assessment order along with reply to show-cause notice, therefore, the matter is covered by the judgment delivered by the honourable apex court in State of Rajasthan and Another Vs. M/s D.P. Metals, .

3. Being aggrieved with the same, the assessing officer filed an appeal before the Rajasthan Tax Board, which was dismissed vide judgment dated August 2, 2007, on the ground that the order of assessment was passed against owner of the goods and not against in charge of the goods and matter relates to the period prior to March 22, 2002 when section 78(5) of the Act of 1994 was amended, therefore, no order could have been passed against the owner of the goods, which is under challenge in this revision petition preferred on behalf of the Department.

4. The submission of learned counsel for the petitioner is that the order passed by the Rajasthan Tax Board is contrary to the judgment delivered by the honourable apex court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , wherein honourable apex court held that the words "the person in-charge" will include the owner of the goods also, therefore, the impugned judgment passed by the Rajasthan Tax Board is liable to be set aside.

5. I have considered the submissions of learned counsel for the petitioner and find force in the same. It is correct that judgment passed by the Rajasthan Tax Board is contrary to the judgment of honourable apex court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , however, I find that declaration form ST 18A, which was not accompanied with the documents at the time of checking of the vehicle/goods, was produced by the assessee before the assessing officer with reply to show-cause notice, therefore, the order of penalty passed by the assessing officer is contrary to the judgment passed by three-judge Bench of the honourable apex court in State of Rajasthan and Another Vs. M/s D.P. Metals, .

6. The honourable apex court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , considered the provisions of section 78(5) of the Act of 1994 and in para 28 of the judgment held that the expression "person in-charge of the goods" u/s 78(5) of the Act of 1994 would include the owner of the goods, therefore, it is apparent that reasons assigned by the Rajasthan Tax Board for setting aside the penalty order is illegal and contrary to the judgment passed by the honourable apex court and the same is liable to be set aside.

7. The honourable apex court in State of Rajasthan and Another Vs. M/s D.P. Metals, , considered the provisions of sections 78(2)(a) and 78(5) of the Act of 1994 and in para 31 held, "... if by mistake some of the documents are not readily available at the time of checking, principles of natural justice may require some opportunity being given to produce the same..." The learned counsel for the petitioner does not dispute that declaration form ST 18-A was produced by the assessee along with reply to show-cause notice before assessing officer. This fact finds place in assessment order as well as the order passed by the Deputy

Commissioner (Appeals). It is relevant to mention that the Deputy Commissioner (Appeals) allowed the appeal of the assessee and set aside the penalty order on the basis of the judgment of the honourable apex court in State of Rajasthan and Another Vs. M/s D.P. Metals, , but the said point was not considered by the Rajasthan Tax Board and the penalty order was set aside on other ground, as mentioned above, which was contrary to the judgment of the honourable apex court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., . In these circumstances, there is no doubt that the judgment passed by the Rajasthan Tax Board is liable to be set aside, but at the same time penalty order is also liable to be set aside in view of the judgment of the honourable apex court in State of Rajasthan and Another Vs. M/s D.P. Metals, , which was rightly set aside by the Deputy Commissioner (Appeals). In view of the above discussions, the impugned judgment dated August 2, 2007 passed by the Rajasthan Tax Board in Appeal No. 1706/2006/Alwar is set aside but it is also held that the order of penalty dated April 8, 1999 was rightly set aside by the Deputy Commissioner (Appeals) vide order dated November 24, 2005. In these circumstances, the revision petition is dismissed in limine on the basis of principles laid down in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, .