(2000) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Sales Tax Revision No. 786 of 1999

Assistant Commercial Taxes Officer, Anti-Evasion II — APPELLANT

Vs

Rajendra Kumar Ashok Kumar — RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 22A, 22A(3), 22A(5), 22A(6), 22A(7)

Citation : (2000) 2 RLW 1081 : (2000) 120 STC 227 : (2001) 4 WLC 678

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties. This revision is filed by revenue against the order of Rajasthan Tax Board, Ajmer, dated October 5, 1998 affirming the order passed by the Deputy Commissioner (Appeals), Taxation Department, Jodhpur, dated July 25, 1991 in appeal filed by respondent-dealer Rajendra Kumar Ashok Kumar by which levy of declaration (sic) u/s 22A(7) against the transporter Gills Sindhu Haryana Transport Company levied by order dated February 28, 1990 has been set aside.

2. The transport vehicle No. SNQ 3125 was checked at the check-post near octroi post, Banad, Jodhpur, while coming from Delhi. Amongst other goods, the truck was carrying 500 kg. cashewnuts packed in 11 packets. On being asked about the bill and the accompanied documents, the Manager, Gills Sindhu Haryana Transport admitted that the goods are being carried in the vehicle with an intention to evade payment of tax and the bill and bilty accompanying the goods do not relate to the goods in question. He also made a prayer that he wants the decision of the case on the spot. On this admission made by the Manager, Gills Sindhu Haryana Transport, penalty u/s 22A(7) at 30 per cent price of the goods was imposed amounting to Rs. 7,500. No appeal appears to have been filed by the transporter against this order. However, appeal was preferred by the

respondent, Rajendra Kumar Ashok Kumar alleging that the order passed against the transporter was invalid because no notice was given to the appellant claiming to be the consignee of the goods. It was also urged that under the order having been passed against the transporter, penalty has been recovered from him which is invalid, by raising demand against him. The Deputy Commissioner was of the opinion that since the name of selling dealer as well as buying dealer was disclosed in bilty, proceedings should have taken place only after notice to these persons and notice has been given to the transporter only and after receiving his reply, an order has been made without hearing the appellant, therefore, the order is invalid and the demand notice which has been issued against the transporter, c/o. Rajendra Kumar Ashok Kumar which is not accompanied by the order under appeal, therefore, it was prayed that the order under appeal be set aside and the amount of Rs. 7,500 deposited by the appellant be returned to him. This plea of the appellant, Rajendra Kumar Ashok Kumar found favour with the appellate authority that from the appellant penalty has been recovered without passing the assessment order against it and, therefore, the order was set aside and it was directed that the amount of penalty deposited by the appellant be returned to him. This order has been affirmed by the Rajasthan Tax Board. The Board also favoured the contention of the assessee that he has not been given opportunity of hearing and the penalty has been levied only after given notice to the transporter and receiving its clarification and it was unlawful for the assessing authority to have levied penalty against the transporter. Aggrieved with the aforesaid order, the revenue has preferred this revision petition.

3. The first question in this case that requires consideration is whether Rajendra Kumar Ashok Kumar could file the appeal against the order u/s 22A.

4. Mr. Mehta has contended that he was the owner of the goods and since his goods had been seized by the assessing officer u/s 22A, he was entitled to file an appeal as an affected party. The contention though attractive does not appear to be well-founded on close scrutiny of the scheme of Section 22A.

5. Under the Rajasthan Sales Tax Act, 1954, the relevant part for the present purpose of Section 22A reads as under :

"Section 22A(3) : The owner or person in-charge of a vehicle, boat or animal shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and such other documents, as may be prescribed in respect of the goods carried in or on the vehicle, boat or animal, as the case may be, and produce the same before any officer in-charge of check-post or barrier or any other officer as may be empowered by Government in that behalf. The owner or person in-charge of a vehicle, boat or animal entering the State limits or leaving the State limits shall also give a declaration containing such particulars as may be prescribed of the goods carried in or on the vehicle, boat or animal, as the case may be, before the officer in-charge of the check-post or barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer, and keep one copy with him.

....

Sub-section (5) : The officer in-charge of a check-post or barrier or the officer empowered under Sub-section (2), may seize or pass order to retain under Sub-section (9), any goods which are under transport by a vehicle, boat or animal and are not covered by a goods vehicle record, a trip sheet or log book, as the case may be, and other documents prescribed under subsection (3) and, when the goods vehicle, boat or animal carrying any goods enters or leaves the State limits, the declaration referred to in Sub-section (3) also.

Sub-section (6) : The officer in-charge of the check-post or barrier or any other officer empowered in that behalf may seize or pass order to retain under Sub-section (9), any goods (other than exempted goods) which are under transport by a vehicle, boat or animal in respect of which the declaration is false or which are not covered by the documents prescribed under Sub-section (3) :

Provided that before seizing any goods, the officer-in-charge of the check-post or barrier or any other officer empowered in that behalf shall record his reasons for doing so shall give a receipt for the goods to the person from whose possession or control they are seized.

Explanation I.--.............

Explanation II.--For the purpose of this section the goods under transport means goods which have been handed over to a carrier and complete delivery thereof has not been taken from such carrier.

Explanation III.--Carrier means any person or agency who undertakes to carry or transport goods from one destination to another.

Sub-section (7) : (a) The officer in-charge of the check-post or barrier or any other officer not below the rank of an Assistant Commercial Taxes Officer, empowered in this behalf may, after giving the owner or person in-charge of the goods a reasonable opportunity of being heard and after holding such further enquiry as he may deem fit, impose on him for possession of goods not covered by goods vehicle record, and other documents prescribed under Sub-section (3) or for submission of false declaration or documents, a penalty not exceeding 30 per cent of the value of such goods, as may be determined by such officer :

Provided that where the goods are being carried without proper documents as required by Sub-section (3) or with any false declaration or statements and the owner or the in-charge or the driver of the vehicle, boat or animal carrying such goods is found in collusion for such carrying of goods, the vehicle, boat or animal shall also be seized by the officer empowered under Sub-section (7), and such officer, after affording an opportunity of being heard to such owner, in-charge or driver may impose a penalty not exceeding 30 per cent of the value of the goods being carried and shall release the vehicle, boat or animal on the payment of the said penalty, or on furnishing such security in such form as prescribed under clause (b) of Sub-section (7) :

Provided further that when an owner, in-charge or driver of a vehicle, boat or animal is found guilty second time of the offence mentioned in the preceding proviso, he shall be liable to a maximum penalty as mentioned in the preceding proviso and the vehicle, boat or animal carrying the goods may be kept seized and detained for a period not exceeding 30 days after the date of the payment of the penalty or furnishing of the security."

6. A perusal of the above provisions goes to show that Sub-section (3) of Section 22A enjoins the duty on the transporter or person in-charge of vehicle, etc., to carry with him a goods vehicle record, a trip sheet or a log book as the case may be and other such documents, as may be prescribed to be carried with the goods carried in or on the vehicle or as the case may be it is required by the transporter or person in-charge of vehicle, boat or animal to produce the vehicle record and other requisite documents required to be carried with goods before the officer in-charge of the check-post or barrier. It is once again obligation of the owner or the person in-charge of the vehicle to give a declaration in the prescribed form containing prescribed particulars of the goods to the officer in-charge of the check-post barrier while entering the State limits or leaving the State limits.

7. Sub-section (5) empowers the officer in-charge of the check-post or barrier or other officer empowered under Sub-section (2) of the Act to seize the goods which are under transport by a vehicle, boat or animal and are not covered by a goods vehicle record, a trip sheet or log book or other documents prescribed under the Rules. This obligation is also again directed against the owner or person in-charge of the vehicle in which or on which goods are carried and the goods have been made liable to be seized when such goods are being carried by transporter without requisite documents.

8. Sub-section (6) also empowers the officer in-charge where the goods under transport are accompanied by the documents and documents found to be false or goods are not covered by those documents to seize such goods.

9. Explanation II clarifies that for the purpose of this section the goods under transport mean goods which have been handed over to a carrier and complete delivery thereof has not taken from such carrier. This gives clue to the fact that provisions of Section 22A are about the inspection of the goods under transport and transporter''s liability in respect of carrying goods unaccompanied with documents during the period from commencement of the journey until goods are delivered by the carrier. Once goods are delivered to consignee, the provision of Section 22A cease to operate upon them.

In the aforesaid context provisions of Sub-section (7) are to be examined.

10. The persons against whom the penalty can be directed are described as the owner or the officer in-charge of the goods, and the offences for which such persons can be subjected to penalty are for possession of goods not covered with any document prescribed under Sub-section (3) or for submission of false or

incorrect declaration or documents. This signifies the class of persons on whom penalty is to be levied for breach. Firstly when the person is found to be in possession of the goods but goods are not covered by vehicle record and other documents prescribed under subsection (3) and secondly the penalty is for submission of false declaration or documents. The former class of persons can only be a transporter and not the owner of the goods unless owner of the goods himself is also the transporter. Obviously the penalty for breach of Section 22A is leviable during the period the goods are under transport. When the goods cease to be in transit, on delivery of possession, no penalty u/s 22A can be levied. So also unless the goods are handed over to carrier, the provisions of Section 22A does not become operative. Therefore during the operative period of Section 22A the possession of the goods is bound to be with transporter. The person who is required to carry the goods along with the documents is also the transporter. Therefore the penalty for possession of goods not covered by the documents prescribed under Sub-section (3) can ordinarily be levied only against the transporter. Whereas the penalty for submission of the false declaration or documents, can be levied against a person from whom such document has originated.

11. This conclusion is further fortified from amendment made in the proviso one to Sub-section (7). Sub-section (5) provides for seizure of goods in transit found to be in breach of provision of Section 22A or with false declarations. Proviso one to Sub-section (7) makes a provision for seizure of vehicle, boat or animal carrying goods. That is to say the transporter''s liability in respect of collusion with the owner of the goods in carrying the goods without documents or for carrying false documents extends to seizure of such transport medium also and to levy of additional penalty. Penalty for mere carrying the goods unaccompanied with the requisite documents has to be confined to the person, who is under obligation to comply with the provision. Such obligation rests only with the owner of vehicle, boat or animal in or on which the goods are carried. The owner of the goods can only fall in such category of person only if he transports goods in his own vehicle or travels as person in-charge of carrier of goods. When the penalty is leviable in respect of the offence for possession of the goods not covered by the goods vehicle record and other prescribed documents, the consequence also must follow against whom who has acted in breach of such obligation.

12. It is of some significance that in the corresponding provision in the Rajasthan Sales Tax Act, 1994, which repealed the old Act, a special provision has been introduced in the form of Section 78(6), envisaging that owner of goods can become a party to such proceedings if on his application he is permitted to become such party and only thereafter other provisions of Section 78 apply to him mutatis mutandis, as if he is the transporter. This is further indicated, that it required a special legislative intervention to carry the liability of penalty to owner of goods for breach of obligation imposed on the transporter.

13. In the present case penalty has been levied only in respect of goods in

transit were not accompanied with requisite documents prescribed under Sub-section (3). As discussed above ordinarily transporter is the person who could be found guilty of such breach. The penalty has been imposed only against the transporter after calling upon him to show cause. The demand in this respect has also been made only in the name of the transporter addressed to be under the care of consignee. But merely by sending the demand notice at the address of consignee, it does not become a demand against the consignee which could be enforced against consignee. If the consignee to obtain delivery of goods, opts to make payment voluntarily, he does not become a person against whom penalty has been levied or against whom a demand has been raised. By acting voluntarily he may have discharged the liability of the transporter and to that extent he may have his claim against the transporter under the provisions of the Indian Contract Act. However, if the consignee were not to pay, he could not be held responsible for demand of such penalty. The liability of carrier in respect of penalty imposed u/s 22A is liable to be recovered from him or from the sale of seized goods. About seizure of goods in possession of carrier for breach of any statutory obligation by the carrier is a matter between him and the department. The consignor and consignee as such do not come in the picture directly. If the transporter having failed to carry his statutory obligation loses control over the goods or incurs any liability affecting the goods, which is made good by the owner of the goods, same may give rise to certain claims between the owner of the goods and carrier, but does not affect the proceedings between the statutory authorities under the statute and the carrier. The transporter having admitted the responsibility of carrying the goods in question in breach of Section 22A as a clandestine transaction and suffered the order of penalty without demur, the present respondent could not have contested the same. For determining any claim that arises between transporter, consignor and consignee depending on terms of their contract and for determining their private rights, the claimant may resort to civil remedy of suits. But the only person whom Commercial Taxes Department deals with is the person who is found in possession of goods in transit not covered by the goods vehicle record or other documents prescribed in Sub-section (3) and against whom orders have been made.

14. In the present case the goods in transit were found in possession of the transporter and were unaccompanied with requisite documents, Penalty, therefore, was also levied against the transporter. In exercise of powers under Sub-section (5) of Section 22A goods were already seized from the transporter''s possession. The demand notice in pursuance of the order has also been issued to the transporter only. In these circumstances, the respondent-dealer, who claims to be the consignee of the goods, does not get a right to challenge the order of penalty levied on carrier of goods merely because he had chosen to secure release of goods on payment of penalty.

15. The premise on which the Deputy Commissioner (Appeals) and the Board had proceeded, is that demand notice has been issued against the consignee without there being any order against him, is non-existent. The order setting

aside the penalty on such non-existent premise cannot be sustained.

16. It may be further noticed that no appeal was filed by the transporter nor he was party to any appeal at any time.

17. Accordingly this revision is allowed. The impugned order of the Deputy Commissioner (Appeals) as well as the Rajasthan Tax Board, Ajmer, are set aside and the order of the assessing officer is restored.

