
(2005) 09 RAJ CK 0076

In the Rajasthan High Court

Case No : SB Sales Tax Revision Petition No. 501 of 1999

Assistant Commercial Taxes Officer

APPELLANT

Vs

Gaurav Steels Ltd.

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 227
Rajasthan Sales Tax Act, 1994 — Section 78, 78(10), 78(2), 78(3), 78(4)
Rajasthan Sales Tax Rules, 1995 — Rule 53, 53(1)

Citation : (2006) 147 STC 36

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Mohd. Rafiq, A.A.G, for the Appellant; Vivek Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act of 1994") is directed against the order of Tax Board, Ajmer, dated February 17, 1999 allowing the appeal of the assessee-respondent No. 430/98/ST/Jaipur and setting aside the penalty of Rs. 39,326 (rupees thirty nine thousand three hundred twenty six only) imposed u/s 78(5) of the Act of 1994.

2. Against the penalty order dated November 17, 1997 imposing the said penalty, the first appeal filed by the assessee failed and the second appeal was allowed by the Tax Board. Hence, the Revenue has filed the present revision petition raising the question of law as to whether the blank form No. ST 18A found along with the other documents relating to the goods in transit namely, the bill and bilty could be said to be the non-compliance of Section 78(2) of the Act and whether the Tax Board was justified in quashing the penalty in such circumstances.

3. In fact, the said issue as to whether for a blank form No. ST 18A found with

the transit of goods, penalty u/s 78(5) of the Act can be imposed or not is an issue concluded by earlier pronouncements of this Court which have been upheld up to apex Court of the country yet such cases keep on coming to the dockets of this Court and they are at the instance of Revenue in larger number. As a matter of fact, whether the penalty in a particular case is imposable or not is a matter within" the discretion of the authority concerned and therefore, once the final fact-finding body namely, the Tax Board, on the basis of the facts and evidence available before it quashed and set aside such penalty, it would be a matter of discretion and the said exercise of discretion would not even give rise to a question of law but since the Revenue files such revision petitions in this Court stretching the matter into the realm of mixed question of fact and law, such revision petitions are entertained and decided on merit. In fact, when the penalty is quashed and set aside by the final fact-finding body, it remains a finding of fact that in the facts and circumstances of the case there was no deliberate attempt to evade the tax and therefore, no penalty can be imposed and such finding should strictly fall within the realm of finding of fact only. However, if such penalty is upheld or re-imposed by the Tax Board after having been set aside by the first appellate authority since the brunt of penalty will have to be borne by the assessee, he cannot be naturally left remediless at the stage of Tax Board and therefore, he is entitled to avail the further remedy either in revisional jurisdiction u/s 86 of the Act of 1994 or by way of writ petition under Article 226 or 227 of the Constitution of India. Therefore, by necessary reasoning of parity the Revenue is also equally entitled to agitate further in the High Court its case for imposition of penalty. Therefore, only if a case is made out of prima facie for imposition of penalty and the Tax Board has set aside the same the Revenue is also entitled to bring up the case to this Court. No water-tight compartment can be made on the mixed question of fact and law about the case and therefore, the present revision petition is held maintainable u/s 86 of the Act of 1994, only to see further whether, it was a fit case for imposition of penalty u/s 78(5) of the Act if a blank form No. ST 18A is found along with the other prescribed documents of transit in accordance with Section 78(2) of the Act.

4. Coming to the merits of the case, the requirement of presence of mens rea or guilty animus in the cases u/s 78(5) of the Act of 1994 has been a matter of debate before this Court and the honourable Supreme Court of India also.

5. On the first principles of law, to say that no mens rea is required to be established for imposing and upholding the penalty u/s 78(5) of the Act of 1994 is to deny the obvious. For any penalty, there should be an offence and for any offence there should be a guilty mind behind such offence. If there is no guilty mind, the breach of law would fall in the realm of a mistake or a default, which may or may not entail a penalty depending upon the nature and magnitude of such breach or default. For technical and venial breach of law, naturally no penalty is imposed or only a token penalty can be imposed unless such defaults are repeated on the part of the same person.

6. However, before it is further looked into in greater detail as to whether penalty u/s 78(5) of the Act of 1994 should be imposed on the defaulter, who may be consignor or consignee of the goods or even the transporter, it would be relevant here to analyse the relevant Rule 53 of the Rajasthan Sales Tax Rules, 1995 providing for such declaration in the form No. ST 18A which is supposed to accompany the other documents like bill and bilty with the transit of the goods in question.

Rule 53. Declaration form required to be carried with the goods in movement for imports within State.--

(1)(a) A registered dealer--

(i) who imports any taxable goods as may be notified by State Government for sale, except when the goods are the goods of the class or classes specified in the certificate of registration under the Central Sales Tax Act, 1956, of the registered dealer purchasing the goods and are purchased for mining or in generation or distribution of electricity or any other form of power ; or

(ii) who receives any goods as may be notified by the State Government consigned to him from outside the State ; or

(iii) who intends to bring import or otherwise receives any goods from outside the State, as may be notified by the State Government of the value of Rs. 10,000 or more for use, consumption or disposal otherwise than by way of sale ;

shall furnish or cause to be furnished a declaration in form ST 18A completely filled in all respect in ink. The counterfoil of the declaration shall be retained by such dealer and its portions marked "Original" and "Duplicate" shall be carried with the goods in movement.

7. After amendment with effect from March 30, 2000 the new Rule 53 has been substituted and the new Rule 53(1) reads as under:

Rule 53. Declaration form required to be carried with the goods in movement for import within State.-

(1)(a) A registered dealer--

(i) who imports any taxable goods as may be notified by State Government, for sale, except when the goods are the goods of the class or classes specified in the certificate of registration under the Central Sales Tax Act, 1956 of the registered dealer purchasing the goods and are purchased for mining or in generation or distribution of electricity or any other form of power ; or

(ii) who receives any goods as may be notified by the State Government, consigned to him from outside the State (or by way of branch transfers/depot transfers/stock transfers) ; or

(iii) who intends to bring import or otherwise receives any goods from outside the State, as may be notified by the State Government of the value of Rs.

10,000 or more for use, consumption or disposal otherwise than by way of sale ;

shall furnish or cause to be furnished a declaration in form ST 18A completely filled in all respects in ink. The counterfoil of the declaration shall be retained by such dealer and its portions marked "Original" and "Duplicate" shall be carried with the goods in movement (and in case the goods are transported through railways, such portions shall be accompanied with the goods during their movement from railway premises to the place of business)

[(b). deleted]

(c) The driver or the other person-in-charge of a vehicle or carrier of goods in movement shall carry with him the documents specified in Clause (a) of Sub-section (2) of Section 78 and declaration prescribed in Clause (a) or (b) of this sub-rule, in respect of the goods in movement and shall produce the same, suo motu before the in-charge of the entry check-post at the time of entry within the State or before the officer empowered u/s 78, at the time of inspection under Sub-section (3) of Section 78, who shall retain the original portion of the declaration form and return the duplicate portion after signature and marking seal in token of having verified it, to the persons producing it, and such officer shall send the retained original portion of the declaration form to the assessing authority of the registered dealer or to the authority who issued the declaration form, in the case of dealer or other person other than registered dealer.

(d) if the declaration form referred to in Clause (a) or (b) in respect of the goods in movement has already been submitted to the in-charge of the entry check-post or to the officer empowered u/s 78, any person transporting the goods shall, on inspection by an officer empowered u/s 78 at any subsequent place, produce the countersigned and sealed copy of the aforesaid declaration along with other documents specified in Clause (a) of Sub-section (2) of Section 78.

Explanation.--For the purpose of this rule, "taxable goods" means all goods, except the goods the sale or purchase of which by dealers is generally exempt from tax without any condition or on the sole condition that an exemption certificate with or without payment of fee is obtained or that the goods are recorded in the registration certificate of the dealer claiming the exemption.

8. The obvious purpose of providing for the said declaration of form No. ST 18A appears to be to keep a record or track of the notified goods moving into the State of Rajasthan, so that their further taxable sale, if taking place within the State of Rajasthan does not take place outside the books of accounts from the concerned dealers and verification of taxable sales of goods and the entry of such goods within the State of Rajasthan is possible. The department is expected to keep the record of form No. ST 18A issued by the various authorities of the department all over the State and reconcile the same with such forms which are deposited back at the time of transit of goods into the State. How far such reconciliation or verification of all the form No. ST 18A issued by the authorities is done in actual practice or not is for the department to see and establish. But in

the analysis of rule itself, as it stands or even stood prior to its amendment, it is clear that per se, mere absence of such declaration in the form at the time of entry of the goods within the State or such declaration in form No. ST 18A being found blank or incomplete cannot amount to intended or actual evasion of local sales tax payable under the Rajasthan Sales Tax Act because the taxable event of taxable sale taking place within the State of Rajasthan is an event which would be yet to take place. Therefore, at the time of checking of such goods and documents relating to such goods while in transit into the State of Rajasthan the presence of declaration of form No. ST 18A is merely to complete the record for further verification by the department and nothing beyond that. A bare perusal of form No. ST 18A before and after amendment, clearly goes to show that the particulars to be filled up in the said form No. ST 18A are nothing but the particulars of bill and bilty accompanying such goods. Therefore, complete filling up of such declaration form No. ST 18A is a mere clerical job which could be done at any stage and even if such form is found blank or incomplete and other documents like bill and bilty relating to goods found in transit are available, it is not a heavenly job to get such form filled up on the spot.

9. Infact, it should be enjoined upon the departmental authorities to check the same, to get the same filled up, if some particulars are not filled up and get it countersigned by the transporter's representatives available. But on the other hand, instead of getting such formality completed or even complete the same at their own end, to raise a bogey of tax evasion and then enrol the transporter or consignor or consignee in the labyrinth of legal process of initiation of penalty proceedings, passing of penalty orders, recoveries of the same at the peril of detention and damage to the goods or leaving the parties to face the litigative battles even in appellate jurisdiction and even up to this Court is nothing but display of sadistic pleasure of the departmental authorities on the spot which, the chances cannot be ruled out, could be subdued in a large number of such cases by greasing of the palms of such authorities.

10. Firstly, if the form No. ST 18A is properly issued by the concerned departmental authorities to the consignee or purchaser of the goods who intends to import such goods within the State of Rajasthan and who in turn sends such blank form or partly filled up the form in part A of the said form to the consignor or seller of the goods outside the State who is supposed to fill up the remaining part of such form and send it back with the goods in transit along with the bill and bilty, should normally be duly filled up, but if such form is incompletely filled up or is even left blank but all the particulars to be filled therein either at the end of consignor or consignee or even transporter are available in the other accompanying documents like bill and bilty whose veracity and genuineness is not in doubt, one fails to understand how such blank forms or incompletely filled up declaration give rise to presumption of intended or actual evasion of tax on that spot entailing detention of goods and vehicle or initiation of penalty proceedings u/s 78(5) of the Act. Getting such form filled up then and there would seal the possibility of its reuse or misuse.

11. Therefore, this Court is of the firm belief that in such cases where other prescribed documents like bill and bilty are available, no case for detention of goods and vehicle or for initiation of penalty proceedings u/s 78(5) of the Act can be made out if the declaration in form No. ST 18A, ST 18AA, ST 18B or ST 18C are incompletely filled up or are even found blank as the particulars are to be filled in such forms are available with the other documents prescribed and are admittedly accompanying the said goods while in transit.

12. Unless the genuineness and veracity of other documents like bill and bilty is also in doubt and there is a prima facie reason available to initiate the enquiry into the same, it makes mockery of the freedom of trade guaranteed under Article 19(1)(g) and freedom of movement throughout the territory of India, enshrined under Article 19(1)(g) of the Constitution of India, if such detention and penalty proceedings are allowed to be initiated and continued for such flimsy reasons. After all, the penalty is not tax and huge collections in the form of penalties cannot be allowed to be made attractive source of revenue or a target fulfilling method and the departmental authorities cannot be made to go out of the way to impose and collect illegally imposed penalties leaving the traders and transporters to sort out their grievances in the departmental remedies or even the remedies before this Court and even up to the apex Court, the very foundation of which from the side of Revenue was never so legally sustainable. The indirect loss of trade volume by such an atmosphere of Penalty Raj or Inspector Raj cannot be lost sight of and imposition of penalties on such technical or venial breaches if at all they can be said to be even that, cannot be allowed in a welfare State governed by the rule of law.

13. This Court is also conscious of the prevalent tax evasion tactics by the traders and dealers and therefore, pious object with which section 78 has been enacted and upheld by the honourable Supreme Court of India, is also necessary to be kept in mind and the initiation of enquiry u/s 78 of the Act by the departmental authority is also not required to be nipped in the bud in every case. If a prima facie case of false or forged documents is available before the authority concerned or even the basic documents like bill and bilty are not available with the goods, it would be only in the fitness of the things if such enquiries are initiated and after enquiry, if a case is made out, even the penalty proceedings may be required to be initiated and concluded upon such enquiry as is deemed fit in the facts and circumstances of the case even in such cases besides the cases as arising above in blank and incomplete form No. ST 18A, ST 18AA or ST 18C.

14. Now a brief halt at the case law station. Both the sides have cited various judgments relating to tax evasion, powers under entry 54, List II, Section 78(5) of the Act and even direct judgments relating to declaration in form No. ST 18A. The list is long and volumes have been written on the subject by various honourable Judges but the golden thread which runs through entire gamut of case laws is that the provisions of Section 78 are constitutionally valid and they

have been enacted to prevent the evasion of tax ; that principles of natural justice have to be read into the process of penalty proceedings under the said provisions ; that mens rea is necessary for imposition of penalty u/s 78(5) of the Act. Though on the last aspect of existence of mens rea there was some difference of opinion earlier between the opinions of two learned single Judges of this Court but that issue was put to rest by authoritative pronouncement of the division Bench of this Court in the case of Parasnath Granite India Ltd. Vs. State of Rajasthan and Another, whereby the two different judgments of learned single Judges were held to be not laying down the correct law. These two judgments were in the cases of Shiv Shambu [2003] 7 Tax 136, and Mutha Premraj case [2002] 3 Tax 51. In fact, the issue relating to form No. ST 18A was found blank or incomplete was decided by the learned single Judge of this Court in favour of the assessee in the case of Assistant Commercial Taxes Officer, Flying Squad v. Voltas Limited [2000] 120 STC 217 and the SLP against the said judgment was also rejected by the honourable Supreme Court of India attaching finality to the said judgment. The division Bench of this Court again in Assistant Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 123 STC 172, held that if the goods were accompanied by all other documents except declaration in form No. ST 18A and all the material particulars to be filled up in such declaration form were disclosed in such other accompanying documents, levy of penalty for not carrying declaration of form No. ST 18A would not be justified. Even the honourable Supreme Court while upholding the vires of Section 78(5) of the Act, in the case of State of Rajasthan v. D.P. Metals [2001] 124 STC 611 in para 31 of the said judgment observed as under:

Such submission of false or forged documents or declaration at the check-post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. Hiding the truth and tendering falsehood would per se show existence of mens rea, even if required. Similarly, where, despite opportunity having been granted u/s 78(5) if the requisite documents referred to in Sub-clause (2) (a) are not produced, even though the same should exist, would clearly prove the guilty intend.

15. Thus, the honourable Supreme Court also clearly held that the existence of mens rea would be established if only false or forged document or declaration is produced at the time of checking or even after giving an opportunity by the authority concerned no such declaration is produced.

16. Similarly, in a later division Bench judgment of this Court in Lalji Mulji Transport Company v. State of Rajasthan [2002] 127 STC 365 : [2002] 3 Tax 21 (Raj), the court while upholding the constitutional validity of Section 78(10) and other Sub-sections of Section 78 the court said, "Thus, the plain and simple scheme of section 78 is that the vehicle passing through the State of Rajasthan carrying goods to be delivered in another State and carries the documents as referred in Section 78(2) and produces at the check-post or anywhere else where a person authorised ask him to do so, if it is done honestly and faithfully, there is

absolutely no problem". However, the court also warned against undue indulgence and leniency in favour of the tax evaders on technical or misplaced sympathy. The court also observed that the penalty provisions cannot be used as a revenue yielding provisions and the object of the penalty provision is to ensure compliance in the larger public interest. The court held that a trader or the transporter cannot be unnecessarily harassed and if it is found that the provision has been misused sufficient safeguard is provided under the statute and the Constitution.

17. Thus, the conclusions derived above, that mere finding of blank or incomplete form No. ST 18A or other such form cannot give rise to presumption of mens rea by itself and no penalty can be imposed in such cases find firm foundation in the gist of aforesaid case laws.

18. On the side opposite, Mr. Rafiq, learned Additional Advocate-General, relied upon the judgments in the case of Commissioner of Sales Tax, Delhi and Others Vs. Shri Krishna Engg. Co. and Others, , and also in the case of Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, , wherein in the absence of production of C form under the Central Sales Tax Act, 1956 and form ST 1 under the Delhi Sales Tax Act, 1975, the court held that the consideration of mens rea in such cases was not important and in the absence of statutory declaration form, the concession or exemption available on the strength of such declaration form could not be given to the assessee concerned.

19. With great respect the reliance placed by the learned Counsel for the Revenue on these cases is off the mark and the availing of concession or exemption from the tax on the strength of C form, under the CST Act or ST 1 form under the Delhi Sales Tax Act, cannot be equated with the requirement of production of form No. ST 18A or such other forms while the goods are in transit on the basis of which no concession or exemption of tax is availed and the only purpose is of verification of goods in transit so that ultimately, they are duly recorded and upon taxable event in the form of taxable sale taking place within the State of Rajasthan tax is collected on the same.

20. Another question which looms large is whether the detention of such goods and vehicle is necessary while the enquiry into the verification of the documents and penalty proceedings are undertaken by the competent authorities. Though, provision has been made for release of goods seized for reasons to be recorded in writing in Section 78(4) of the Act, coupled with the powers to release the goods under Sub-section (7) of Section 78 of the Act and Sub-section (9) of Section 78 for release of the vehicle and there is also a time-limit of seven days for such enquiry provided in Section 78(4) of the Act, the ground realities appear to be otherwise. The powers of release of goods and vehicle upon security subject to further verification is hardly used by the authorities concerned and prolonged detention of goods and vehicle appears to be the order of the day resulting in serious financial and indirect loss even to the genuine cases of transit

of goods along with proper documents and even in the cases when the goods and vehicle are merely passing through the State of Rajasthan while entering in from one side and exiting from the other side which would appear from the documents itself. The period of seven days, though it is an outer-limit also appear to be very long. The initial verification of the documents to form a prima facie opinion about their genuineness or otherwise should not take beyond two hours. It is not unknown that long queues of trucks waiting for their papers to be verified, sealed and signed by such check-post authorities are even kept in switch on condition resulting in tremendous financial loss in the form of wastage of petrol and diesel which resources are depleting day by day and the price scales are shooting up and unless a cause of concern is shown even in the implementation of the provisions of tax laws like the case in hand, it would only be at a great peril and this Court also cannot turn Nelson's eye to such ground realities.

21. The purpose is to impress upon the Revenue department which implements this law to frame such guidelines and make rules in this regard so that balance is struck between the two, the unnecessary and illegal harassment and penalty proceedings on the one hand and real and actual cases of evasion of tax on the other hand. This Court on the basis of nature of cases that come before it can only observe that the scales of balance do not appear to be fairly balanced as of today and they are more tilted towards Revenue side. The prolonged detention of goods and vehicles does not serve anybody's purpose and certainly it cannot be used as keeping the same as a sort of security for realisation of penalty, if any, which could be imposed or would be imposed after holding an enquiry as envisaged under Sub-section (5) of Section 78 of the Act. What in such cases is really required is to verify the existence of the dealer or consignee within the State, release the goods and vehicle with a seal affixed thereon requiring further verification at the end of consignee-dealer and then directing the local assessing authority having jurisdiction to ensure that the goods so coming to him are duly accounted for once the goods reach him and tax is duly charged and paid as per applicable law. However, to keep the goods and vehicles detained at the check-post for prolonged hours does not seem to serve the object for which Section 78 of the Act has been enacted. If only in peculiar and particular cases such detention becomes essential beyond 24 hours, recording of reasons by the higher authorities of the department not below the rank of Commercial Taxes Officer or Deputy Commissioner, showing application of mind by them should be made necessary so that the bona fide cases of transit do not suffer. The department should devise system and method by which day, date and time of checking, detention, release and verification, etc., is duly recorded with cross checks in place. Therefore, it is expected from the Commercial Taxes Department to urgently frame detailed and proper guidelines in this regard also.

22. Another aspect of the matter which necessarily engages the attention of this Court is that petty matters or matters with small stakes like penalty quantum of Rs. 2,000 to Rs. 10,000 being brought before this Court at the instance of Revenue and a large chunk of revision petitions relating to penalty u/s 78(5) of

the Act before this Court are in that range. While the Income Tax Department has formulated guidelines in this regard and the cases involving small stakes by limit would not be agitated after the final finding fact body has decided against it, unfortunately, no such guidelines appear to have been framed by the Commercial Taxes Department of the State of Rajasthan and that contributes even to the burden of this Court. The expenditure incurred by petitioner department itself in dealing with such cases within small stakes besides the loss of productive man hours at various level and mechanical sanctions issued for filing revision petitions without really applying mind as to the genuine questions of law arising, is also a cause of concern and it would be only in the fitness of things if the Commercial Taxes Department considers it with all seriousness to frame the guidelines in this regard also so that respective appeals or revisions involving small stakes do not unnecessarily burden the dockets of this Court. The sanction order for filing revision petitions at the instance of Revenue, showing application of mind by the competent authority should be filed with the memo of revision petition in this Court. For the present, this Court only considers it expedient to leave it to the best discretion of the department to frame the guidelines in this regard, for deciding the cut-off of stakes involved, for deciding whether revision petition should be filed in this Court or not.

23. For the aforesaid reasons, the present revision petition filed by the Revenue, is dismissed. It is expected that the Commercial Taxes Department, will formulate the guidelines as discussed above, expeditiously not later than a period of two months.

24. No order as to costs.