(2010) 11 RAJ CK 0025

In the Rajasthan High Court

Case No : . Sales Tax Revision Petition No. 275 of 2008

Assistant Commercial Taxes Officer — APPELLANT

Vs

Gupta Theli Bhandar and Another — RESPONDENT

Date of Decision : 11-11-2010

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

Citation : (2012) 50 VST 423

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : A Kaushik On Behalf of R. B. Mathur, for the Appellant;

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the petitioner. Briefly stated the facts of the case are that on April 16, 1999 Vehicle No. HR-47/4298 was checked and it was found that declaration form ST-18A was not accompanied with other relevant documents of the goods. Therefore, a notice to show cause was given to the respondent as to why penalty may not be levied u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred as, "the Act"). The respondent filed written reply to the notice, wherein the mistake for not producing the declaration form ST-18A of the Act was admitted. Since declaration form ST-18A of the Act was neither accompanied with the goods at the time of checking of the vehicle nor was it produced in response to show-cause notice, therefore, assessing officer imposed a penalty of Rs. 35,230 u/s 78(5) of the Act.

2. Being aggrieved with the same, the assessee preferred an appeal, which was allowed by the Deputy Commissioner (Appeals) on two grounds; first is that assessing officer has not proved the mens rea on the part of the assessee to evade the tax and second, is that matter relates to the period prior to March 22, 2002, therefore, order could not have been passed against owner of the goods and it could have been passed only against incharge of the vehicle/goods. Being aggrieved with the same, the Revenue preferred an appeal before the Rajasthan Tax Board, which was dismissed vide judgment dated April 3, 2007, which is

under challenge in this revision petition preferred on behalf of the Revenue.

3. Submission of the learned counsel for the petitioner is that admittedly declaration form ST-18A of the Act was not produced at the time of checking of vehicle and subsequently along with reply to show-cause notice before the assessing officer. Therefore, penalty u/s 78(5) of the Act was rightly imposed by the assessing officer. So far as second ground for setting aside the penalty order by the Deputy Commissioner (Appeals) as well as the Rajasthan Tax Board that penalty order could not have been passed against the owner of the goods as matter was relating to the period prior to March 22, 2002 is concerned, the same is contrary to the decision of the honourable apex court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., . Therefore, this revision petition be allowed and orders passed by both the appellate authorities be set aside.

4. No one is present on behalf of the respondent despite service of notice.

5. I have considered the submissions of the learned counsel for the petitioner in the light of the reasons assigned by both the appellate authorities for setting aside the penalty order passed by the assessing officer. Penalty u/s 78(5) of the Act is attracted for breach of the provisions of section 78(2)(a) of the Act. Admittedly, declaration form ST-18A was neither produced at the time of checking of the vehicle nor along with reply to show-cause notice before the assessing officer. Therefore, it is a clear case of breach of provisions of section 78(2) of the Act. The Deputy Commissioner (Appeals) while setting aside the penalty order observed that the assessing officer did not make any inquiry and failed to prove the guilty mind or mens rea on the part of the assessee. Therefore, the penalty order is liable to be set aside. The reasoning assigned by the Deputy Commissioner (Appeals) is contrary to the judgment of the honourable apex court in Guljag Industries Vs. Commercial Taxes Officer, , wherein the honourable apex court held that mens rea is not essential ingredient for contravention of section 78(2) of the Act.

6. Apart from above, the Deputy Commissioner (Appeals) as well as the Rajasthan Tax Board, both have set aside the penalty order on the ground that penalty order has been passed against the owner of the goods, whereas penalty order could not have been passed against owner of the goods for an offence relating to the period prior to March 22, 2002. The reason assigned by both the appellate authorities is illegal and contrary to the law laid down by the honourable apex court.

7. In Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , the honourable apex court considered the provisions of section 78(2) and 78(5) of the Act and held that the expression "person in-charge of the goods" u/s 78(5) would include the owner of the goods. In these circumstances, I find that orders passed by both the appellate authorities are not sustainable in the eye of law and are liable to be set aside. Consequently, revision petition filed by the Revenue is

allowed, impugned judgment dated April 3, 2007 passed by the Rajasthan Tax Board, order dated July 20, 2005 passed by the Deputy Commissioner (Appeals) are set aside and order dated April 17, 1999 passed by the assessing officer is restored. Since no one is present on behalf of the respondent, therefore, there is no order as to cost.

