

(2004) 07 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Sales Tax Revisin No. 16 of 2004

Assistant Commercial Taxes Officer

APPELLANT

Vs

Kanoi Dal Mill

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(2), 78(5), 84

Citation : (2006) 146 STC 426 : (2004) 5 WLC 177

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : O.P. Boob, for the Appellant; Manoj Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This revision petition has been filed by the petitioner-Assistant Commercial Taxes Officer against judgment and order dated March 24, 2003 (annexure 3) passed by the Rajasthan Tax Board, Ajmer, in Appeal No. 874/2002 by which the appeal of the petitioner was dismissed.

2. It arises in the following circumstances:

On February 8, 2000, the vehicle No. RJ-32/G-0945 belonging to the respondent-firm, which was carrying goods (130 bags of dall), was intercepted and checked by the petitioner-Assistant Commercial Taxes Officer on Udaipur-Ahmedabad route near Ratanpur (Dungarpur) and during checking, it was found that the declaration form ST-18C was not accompanied with the goods. Since the goods in transit were not accompanied with declaration form ST-18C, therefore, a notice u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act of 1994") for violation of the provisions of Section 78(2) of the Act of 1994 was issued by the assessing authority to the respondent-dealer as to why penalty be not imposed.

A reply to the said show cause notice was filed by the respondent on February 12, 2000 stating, inter alia, that all papers were available at the time when the

checking was made by the petitioner-Assistant Commercial Taxes Officer, but because of some negligence, the declaration form ST-18C could not be accompanied with the goods, though it was also filled-in-up. It was further alleged by the respondent that he had no mala fide intention and along with the reply, the declaration form ST-18C was filed by the respondent.

After examining the matter, the assessing authority came to the conclusion that the respondent was guilty of violating the provisions of Section 78(2) of the Act of 1994 and consequently, the assessing authority through order dated February 12, 2000 (annexure 1) imposed the penalty of Rs. 54,561 on the respondent-dealer.

Aggrieved from the said order dated February 12, 2000 (annexure 1), the respondent-dealer preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Kota, u/s 84 of the Act of 1994 and through judgment dated March 11, 2002 (annexure 2), the Deputy Commissioner (Appeals) allowed the appeal of the respondent and set aside the order of the assessing A authority dated February 12, 2000 (annexure 1) holding, inter alia, that since along with the reply to the show cause notice, the requisite declaration form ST-18C was produced by the respondent-dealer and since rest papers were found valid and correct one and not bogus one, therefore, in these circumstances, the appellate authority came to the conclusion that from the above facts, it could not reasonably be inferred that the respondent-dealer had any intention of evading tax.

Aggrieved from the said judgment dated March 11, 2002 (annexure 2), the petitioner preferred appeal before the Rajasthan Tax Board, Ajmer and the Rajasthan Tax Board, Ajmer, through impugned judgment dated March 24, 2003 (annexure 3) dismissed the appeal of the petitioner and affirmed the findings recorded by the learned first appellate authority through judgment dated March 11, 2002 (annexure 2). Hence, this revision petition.

3. In this revision, the main case as put forward by the learned Counsel for the petitioner is that in cases when at the time of checking, the declaration form ST-18C is not found accompanied with "the goods, the provisions of penalty clauses embodied in Section 78(5) of the Act of 1994 for violation of the provisions of Section 78(2) of the Act of 1994 are automatically attracted and therefore, because of this fact, the impugned judgments annexure 2 dated March 11, 2002 and annexure 3 dated March 24, 2003 of the first appellate authority (Deputy Commissioner (Appeals) and second appellate authority (Rajasthan Tax Board, Ajmer) respectively cannot be sustained and are liable to be quashed and set aside.

4. On the contrary, the learned Counsel appearing for the respondent has submitted that penalty clauses cannot be attracted automatically unless and until the element of mens rea is established and in this respect, he has placed reliance on the following decisions of this Court:

- (i) Assistant Commercial Taxes Officer, Flying Squad, Raniwada Distt. Jalore (Rajasthan) Vs. M/s. Voltas Limited Jaipur (Rajasthan),
- (ii) Assistant Commercial Taxes Officer Vs. Rajasthan Taxation Tribunal and Another,
- (iii) Parasnath Granite India Ltd. Vs. State of Rajasthan and Another,
- (iv) Assistant Commercial Taxes Officer Vs. Mahaveer Chand Jain and Company,
- (v) Assistant Commercial Taxes Officer v. J.P. Singh & Sons (S.B. Civil Sales Tax Revision No. 823 of 2002 decided on July 6, 2004)

5. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent and gone through the entire materials available on record.

6. There is no dispute on the point that on February 8, 2000 when the vehicle in question carrying the goods of the respondent was checked by the petitioner, the declaration form ST-18C was not accompanied with the goods and there is also no dispute on the point that rest papers were found valid and correct one.

7. There is also no dispute on the point that later on, along with the reply to the show cause notice, the declaration form ST-18C was produced by the respondent-dealer.

8. The Deputy Commissioner (Appeals) through judgment dated March 11, 2002 (annexure 2) came to the conclusion that since the requisite declaration form ST-18C was produced by the respondent-dealer along with the reply to the show cause notice and since rest papers were found valid and correct one and not bogus one, therefore it cannot reasonably be inferred that the respondent-dealer was having any intention of evading tax. These findings of the Deputy Commissioner (Appeals) were affirmed by the Rajasthan Tax Board, Ajmer, through impugned judgment dated March 24, 2003 (annexure 3).

9. In my considered opinion, mere contravention of provisions of Section 78(2) of the Act of 1994 cannot authorise the assessing authority to impose penalty u/s 78(5) of the Act of 1994 unless there is a mens rea on the part of the trader. Apart from this, mens rea is an essential ingredient for imposing penalty.

10. The word "mens rea" does not bear a literal meaning (i.e., "bad mind" or guilty mind) because one who breaks the law even with the best of motives still commits a crime. The language is no longer meant to convey the idea of general malevolence characteristic of early common-law usage. The true translation is criminal intention or recklessness. Words typically imposing a mens rea requirement include wilfully, maliciously, fraudulently, recklessly, negligently, corruptly, feloniously and wantonly.

The fundamental principle pertaining to mens rea is based on the maxim *actus non facit reum nisi mens sit rea*. (the intent and act must both concur to constitute the crime). Meaning thereby an act does not make a man guilty

without guilty intention to do the guilty act which is made penal by the statute or common law.

11. This Court in Assistant Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 123 STC 172 RAJ has observed that existence of mens rea on the part of dealer committing breach for avoidance or evasion of payment of tax is sine qua non for levying penalty for such breach which otherwise is of technical nature.

12. Thus, it can be concluded that mens rea is an essential ingredient for imposing penalty u/s 78(5) of the Act of 1994 or violating the provisions of Section 78(2) of the Act of 1994. Furthermore, a difference can be made in respect of intentional contravention of any provision or breach of any provision technically without mens rea. It is made clear that contravention of any provision, which is not accompanied by mens rea, may be treated as technical one and for that breach, provisions of penalty clauses embodied in Section 78(5) of the Act of 1994 cannot be attracted automatically. Further, every contravention cannot entail penalty clause as provided in Section 78(5) of the Act of 1994.

13. The division Bench of this Court in the case of Parashwa- nath Granite India Ltd. [2006] 144 STC 271 RAJ has reiterated the same view on mens rea and in that case, the division Bench overruled the two single Bench judgments of this Court in Mutha Premraj v. ACTO (2002) 3 T U 51 and ACTO v. Shiv Shambhu (2003) 7 T U 136 where contrary view was taken.

13A. In the present case, there are concurrent findings of facts recorded by the Deputy Commissioner (Appeals) and Rajasthan Tax Board that no doubt at the time when the checking was made, the declaration form ST-18C was not accompanied with the goods, but since other papers were found genuine, valid and correct one and further, later on, declaration form ST-18C was produced by the respondent-dealer along with the reply to the show cause notice, therefore, in these circumstances, no mala fide intention or mens rea on the part of the respondent-dealer for avoidance or evasion of payment of tax can be inferred or gathered. These findings of facts cannot be said to be erroneous or perverse one and further, they do not suffer from any basic illegality or infirmity. Hence, no interference is called for with the same.

14. For the reasons stated above, no substantial question of law arises in this revision petition and there is no force in this revision petition and the same deserves to be dismissed.

Accordingly, this revision petition, filed by the petitioner-Assistant Commercial Taxes Officer is dismissed. No order as to costs.