
(2013) 12 RAJ CK 0045
In the Rajasthan High Court
Case No : STR No. 11 of 2005

Assistant Commercial Taxes Officer

APPELLANT

Vs

Kanta Prasad Sharma

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 86

Citation : (2014) 43 GST 194 : (2014) 70 VST 244

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Tanvi Sahai, for the Appellant;

Judgement

Alok Sharma, J.—This sales tax revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter "the Act of 1994") impugns the judgment dated 14.09.2004, passed by the Rajasthan Tax Board, Ajmer whereby the Tax Board has upheld the order of the Deputy Commissioner (Appeals) II, Jaipur passed on 01.07.2003 quashing and setting aside the order of penalty on the respondent-assessee passed by the assessing officer under his order dated 15.06.2002. The facts of the case are that on 14.06.2002, vehicle No. UP 85-C-0469 transporting wheat from Mathura in the State of UP to the State of Rajasthan was checked at the Railway Godown, Bharatpur. On the driver of the vehicle being required to furnish documents relating to the goods in transit as mandated u/s 78(2) of the Act of 1994, the driver stated to not possessing any documents at all. In these circumstances, the statement of the driver of the vehicle in which the goods were transited was recorded. Thereafter a show cause notice was issued u/s 78(5) as also u/s 10(A) of the Act of 1994 to the driver of the vehicle on 14.06.2002 itself fixing the date of hearing as 21.06.2002. The vehicle in question was detained at the G.R.P. Police Thana, Railway Station, Bharatpur u/s 78(4)(a) of the Act of 1994 till further inquiry in the matter. In compliance with the notice dated 14.06.2002, Shri Kanta Prasad Sharma, respondent-assessee in this case, appeared through his Advocate before the Assessing Officer on 15.06.2002. A

written reply to the notice was filed stating that the goods in transit belonged to farmers and had been bought by one Kripal Singh for the purpose of sale to M/s. Thakur Das Bhagwan Das, New Mandi Yard, Bharatpur. It was stated that in these circumstances, the provisions of the Rajasthan Sales Tax Act, 1994 had no application to the goods in transit even in the course of inter-State sale. It was further stated that as the goods in transit belonged to farmers, the same were not liable to be taxed under the Act of 1994, therefore there was no question of any evasion of tax and no penalty as proposed could be levied.

2. The Assessing officer on consideration of the reply filed by the respondent-assessee held that the goods were admittedly being transported from State of UP to the State of Rajasthan and consequently aside of other documents being required to accompany them u/s 78(2)(a) of the Act of 1994, they had also to be accompanied by form ST 18A. The said form was not found with the goods in transit, nor was filed along with reply to the show cause notice dated 14.06.2002. The Assessing Officer also found that in fact the goods in transit belonged to a business firm of Mathura in State of UP and had been brought for the purpose of sale to M/s. Thakur Das Bhagwan Das, New Mandi Yard, Bharatpur. On the aforesaid findings concluding that there was a clear violation of provision of Section 78(2)(a) of the Act of 1994, the Assessing Officer levied a penalty on the goods in transit @ 30% of their value with reference to Section 78(5) of the Act of 1978. The goods was also taxed @ 4% of their value treating them as part of inter-State commerce. Penalty @ 50% of the value of the goods was also imposed with reference to Section 78(10A) of the Act of 1994 in view of the fact that the driver of the vehicle had gone through the check post without having the bills and other documents required to accompany the goods in transit endorsed. The aggregate liability fixed against the respondent-assessee was thus Rs. 44,352/-.

3. The respondent-assessee filed an appeal before the Deputy Commissioner (Appeals) II, Jaipur against the order dated 15.06.2002, passed by the Assessing Officer. Vide order dated 01.07.2003, the Deputy Commissioner (Appeals) II, set aside the penalty and tax u/s 78(5) of the Act of 1994. Tax levied @ 4% was also set aside. In respect of the penalty u/s 78(10A) of the Act of 1994, it was reduced from 50% of the value of goods to 5% of their value. The petitioner Department thereupon being dissatisfied with the order passed by the Deputy Commissioner (Appeals) II on 01.07.2003 filed a further appeal to the Rajasthan Tax Board, Ajmer, Vide its order dated 14.09.2004, the said appeal was dismissed.

4. The present revision petition was admitted on 08.02.2005. In my considered opinion, the following substantial question of law arises for determination in this revision petition:

(i) Whether in the facts and circumstances of the matter, non-submission of any bill, bilty at the time of inspection by the vehicle driver (who was subsequently describes as owner of the goods in question) in relation to the goods in question

did not amount to violation of the provisions of Section 78(2)(a) of the Rajasthan Sales Tax Act thereby making the assessee liable for penalty u/s 78(5) of the said Act.

5. Ms. Tanvi Sahai, appearing for the petitioner, has submitted that in terms of Section 78(2)(a) of the Act of 1994, it is essential that the goods in transit into or out of the State of Rajasthan are accompanied by a goods vehicle record including challans, "bilties", bills of sale or dispatch memos and prescribed declaration forms. She submits that thus whatever the occasion for movement of the goods, be it import or export in the State of Rajasthan and whatever be the sources of the goods, the provisions of Section 78(2)(a) of the Act of 1994 attract and have to be strictly complied with as held by the Hon'ble Supreme Court in the case of Guljag Industries Vs. Commercial Taxes Officer, . Counsel submits that in the admitted facts of the case as the goods were being transported on the relevant date from the State of UP to the State of Rajasthan, it was incumbent upon the owner/driver of the vehicle to accompany them with the documents required u/s 78(2)(a) of the Act of 1994 read with Rule 53 of the Rajasthan Sales Tax Rules, 1995. It is submitted that the liability for violation of the provisions of statute u/s 78(2)(a) of the Act of 1994 is strict with mens rea not being required nor the issue of evasion of tax being required to be considered.

6. None has appeared on behalf of the respondent-assessee in spite of service.

7. The judgment of the Hon'ble Supreme Court in the case of Guljag Industries (Supra) is quite explicit wherein it was held that "it is not open to the assessee to contend that in certain cases of inter-State transactions they were not liable in any event for being taxed under the RST Act, 1994 and, therefore, penalty for contravention of Section 78(2) cannot be imposed. As stated hereinabove, declaration has to be given in Form ST 18A/18-C even in respect of goods in movement under inter-State sales. It is for contravention of Section 78(2) that penalty is attracted u/s 78(5). Whether the goods are put in movement under local sales, imports, exports or inter-State transactions, they are goods in movement, therefore, they have to be supported by the requisite declaration." When the aforesaid enunciation of law by the Hon'ble Supreme Court on the interpretation of Section 78(2)(a) of the Act of 1994 is applied to the facts of the case where wheat was in transit from the State of UP to the State of Rajasthan by a registered dealer, it was legally mandatory that the goods in transit were to be accompanied by the documents prescribed u/s 78(2)(a) of the Act of 1994 more particularly form ST 18A as goods were being imported in the State of Rajasthan. Admittedly, the driver of the vehicle transporting the goods did not have any document with him. In spite of notice dated 14.06.2002, no document including Form ST 18A was sought to be filed. Consequently in my considered opinion, the Assessing Officer vide order dated 15.06.2002 rightly visited the respondent-assessee with penalty u/s 78(5) of the Act of 1994. The Deputy Commissioner (Appeals) II as also the learned Tax Board however interfered with

the order of penalty dated 15.06.2002, passed by the Assessing Officer without just cause and in fact contrary to the enunciation of law by the Hon''ble Supreme Court in the case of Guljag Industries (supra). It is trite that the judgments of the Hon''ble Supreme Court operate retrospectively unless the enunciation of law by the Hon''ble Supreme Court is specifically made applicable subsequent to the decision of the Court with reference to doctrine of prospective of overruling.

8. Consequently, I would answer the question of law framed in favour of the petitioner and allow this revision petition. The order dated 14.09.2004, passed by the Tax Board as also the order dated 01.07.2003, passed by the Deputy Commissioner (Appeals) II are quashed and set aside. Resultantly the penalty u/s 78(5) of the Act of 1994 visited upon the respondent-assessee by the Assessing Officer under its order dated 15.06.2002 would be liable to be restored. So restored. The revision petition is allowed accordingly.