(2015) 07 RAJ CK 0048

In the Rajasthan High Court

Case No : SB Sales Tax Revision Petition No. 25 of 2005

Assistant Commercial Taxes Officer — APPELLANT

Vs

L.G. Electronics India Pvt. Limited — RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Citation : (2015) 85 VST 41

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of R.B. Mathur, Counsel, for the Appellant; T.C. Jain, Counsel, Advocates for the Respondent

Judgement

J.K. Ranka, J.—Instant sales tax revision petition is directed against order of the Tax Board dt.29/07/2004 and relates to penalty which was imposed upon the assessee under Section 78(5) of the Rajasthan Sales Tax Act, 1994.

2. It may be observed that a Larger Bench was constituted by Hon''ble the Chief Justice to resolve and decide the following questions framed after noticing a conflict of opinions in the Division Bench judgments of this Court in Parasnath Granite India Ltd. Vs. State of Rajasthan and Another, (2004) 4 RLW 2424 : (2006) 144 STC 271 : (2004) 5 WLC 331 , decided on 02.06.2004, and in M/s. Maharana Talkies Vs. State of Rajasthan and Others (D.B. Civil Special Appeal No. 858/1994), reported in (2004) 19 Sales Tax Today 239 , decided on 29.11.2004, as well as Lalji Mulji Transport Company Vs. State of Rajasthan and Another, (2003) 2 RLW 1237 : (2002) 5 WLN 561 , as follows:-

"(i) Whether requirement of mens rea is relevant for the purpose of determining the liability for penalty in terms of Section 78 sub-section (5) of the Rajasthan Sales Tax Act, 1994"

(ii) Whether the mens rea is required to be proved as a necessary ingredient for imposition of penalty under sub-section (5) of Section 78 on proven violation of sub-section (2) of Section 78 of the Rajasthan Sales Tax Act, 1994?

(iii) Whether in view of the amendment to Rule 55 of the Rajasthan Sales Tax Rules, 1995 pursuant to the decision of the Hon''ble Supreme Court in the case of State of Rajasthan and Another Vs. M/s. D.P. Metals, on sufficient cause being shown whether any authority empowered would be justified in not imposing the penalty in the absence of mens rea being proved?

(iv) Whether the mens rea is required to be proved as a necessary ingredient for imposing of penalty under sub-section (5) of Section 78 on proved violation of sub-section (2) of Section 78 of the Rajasthan Sales Tax Act, 1994?

3. The Larger Bench of this Court vide order dt.26/02/2015 passed in Sales Tax Revision Petition No. 92/1999 (Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd.) and other connected revision petitions has answered the questions as follows:-

(i) The requirement of mens rea is not relevant for the purpose of determining the liability for penalty, in terms of Section 78(5) of the RST Act, 1994.

(ii) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of Section 78, on proving violation of sub-section (2) of Section 78 of the RST Act, 1994.

(iii) The amendment to Rule 55 of the RST Rules, 1995, in pursuance to the decision of the Hon''ble Supreme Court in State of Rajasthan And Another Vs. M/s. D.P. Metals (supra), authorises the authority empowered, to make an enquiry of violation of Section 78(2), and not to adjudicate as to whether the mens rea was present in violation of sub-section (2) of Section 78, for imposing penalty under sub-section (5) of Section 78 of the RST Act, 1994.

(iv) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of Section 78, on proving violation of sub-section (2) of Section 78 of the RST Act, 1994.

4. After answering the questions in S.B. Sales Tax Revision No. 92/1999, and other connected Sales Tax Revisions, the matters were ordered to be listed before the Bench having jurisdiction to decide the matters, in accordance with the opinion given and the answers provided by the Larger Bench on such opinion and accordingly the instant revision petition is being decided.

5. Brief facts, which can be noticed on perusal of the impugned order, are that the assessee is a limited company manufacturing electrical items namely; washing machines, refrigerators and other items and its vehicle, bearing No. HR 38-A-7416 was intercepted by the Anti Evasion Wing of the revenue-department on 10/09/2000 at check post Shahjahanpur. On enquiry from the Incharge of the vehicle, stock transfer note No. 1117 dt.09/09/2000 was found alongwith GR No. 2489. Though declaration form ST-18-A, bearing No. 36914/3, was found but it was totally blank and since there was apparent violation of Section 78(5) read with Rule 53, a show cause notice was issued. The representative of the respondent-assessee appeared along with counsel and pleaded that the goods

were under stock transfer and thus, there was no liability to tax and pleaded that the form could not be filled in, on account of the mistake and it being a technical mistake, no penalty was to be levied. However, the Assessing Officer (for short, ''AO'') was dissatisfied with the explanation so officered and imposed penalty by holding that the declaration form ST-18-A duly filled in was the prime necessity under the Act.

6. The respondent-assessee preferred appeal before the Deputy Commissioner (Appeals) (for short, ''DC(A)'') before whom it was claimed that all supporting evidences led clearly proved that the documents were found to be proper and merely because the declaration form ST-18A was blank, it does not lead to evasion of tax and the DC(A) accepted the contention of the assessee and deleted the penalty.

7. The petitioner-revenue carried the matter in appeal before the Tax Board who also upheld the order of the DC(A) primarily on the basis that mens rea was not proved by the Revenue and further that the other documents supported the claim that the goods were being transported in an appropriate manner.

8. Counsel for the petitioner-revenue contended that it is a clear-cut case of violation of Section 78(5) read with Rule 53 and she contended that both the appellate authorities deleted the penalty solely on the basis that mens rea was not proved by the revenue and contended that much water has flown thereafter and not only the Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer, (2007) 293 ITR 584 : (2007) 10 JT 1 : (2007) 9 SCALE 564 : (2007) 7 SCC 269 : (2007) 8 SCR 793 : (2007) 9 VST 1 as also the Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd. (supra) has held that mens rea is not essential. After relying upon both the judgments, she contended that if the form was left blank, even though the claim of the assessee might have been that it was a stock transfer, even then it was with the intention of evasion of tax. She contended that when bills and vouchers were found, then why the declaration form ST-18A was left blank has not been clarified by the assessee before all the three authorities and both the appellate authorities have solely gone on the basis of mens rea when in a case like this, mens rea is not essential. She further contended that there was requirement of carrying declaration form ST-18A in a case of stock transfer as well and the assessee being a limited company was certainly aware of the declaration form to be carried which, in-fact, was carried but was blank for the reason best known to it. She further questioned that there was some purpose of tax evasion otherwise, the declaration form ST-18A though carried was duly signed but blank and even material particulars were blank.

9. Per-contra, Shri T.C. Jain, learned counsel for the respondent-assessee contended that it is a case of stock transfer and since there was no tax liability, the question of tax evasion does not arise. He contended that there may be several reasons for not filling in the declaration form and it may be on account of inadvertent error or mistake committed on the part of the clerical staff. He

further contended that when all the other requisite documents relating to goods under transport were available and entire information was contained in the other supporting documents, then merely because the declaration form ST-18A was not filled in, does not make any difference. He further contended that this Court, after considering the judgment in the case of Guljag Industries Vs. Commercial Tax Officers (supra) and also State of Rajasthan and Another Vs. M/s D.P. Metals, AIR 2001 SC 3076 : (2001) 8 JT 328 : (2001) 7 SCALE 14 : (2002) 1 SCC 279 : (2001) 124 STC 611 : (2001) AIRSCW 4091 : (2001) 7 Supreme 667 , has remitted the matters back to the AO to grant an opportunity of removal of defects/deficiency and in this regard relied upon the judgments rendered in the case of CTO Vs. Jain Tube and ACTO Vs. L.G Electronics (I) Ltd.: 2011-30 Tax Update 125 (Raj. HC); CTO Vs. Hindustan Petroleum Corporation Ltd.: 2011-30 Tax Update 251 (Raj. HC); ACTO Vs. M/s. Hariom Company: 2011-30 Tax Update 285 (Raj. HC) and ACTO Vs. Indian Oil Corporation Ltd., STR No. 82/2011, decided on 16/05/2013. He further contended that the Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation (supra) has merely held that mens rea is not essential in such cases and prayed that the order of the two appellate authorities was just and proper or in the alternative the matter may be remitted back in the light of the view already taken by this Court. He also relied upon judgments rendered in the case of Arihant Builders, Developers and Investors Pvt. Ltd. Vs. Income Tax Appellate Tribunal and Others, (2005) 197 CTR 471 : (2005) 277 ITR 239 ; Essar Shipping Ports and Logistics Limited Vs. Commercial Tax Officer (FAC), (2010) 30 VST 366 and Union of India and Others Vs. Kaumudini Narayan Dalal and Another, (2001) 168 CTR 3 : (2001) 249 ITR 219 : (2001) 4 SCALE 227 .

10. I have considered the arguments advanced by counsel for the parties.

11. At the outset, it may be observed that the Hon''ble Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer (supra) and Larger Bench of this Court in the case of M/s. Indian Oil Corporation Ltd. (supra), has held that mens rea is not essential and therefore, the observation of the Tax Board in this regard is reversed.

12. It would be appropriate to quote Section 78(5) of the RST Act, 1994 and Rule 53 of the RST Rules, 1995, which reads as under:-

"78. Establishment of check-post and inspection of goods while in movement:-

(5) The Incharge of the check-post or the the officer empowered under sub-section (3), after having given the [owner of the goods or a person authorised in writing by such owner or the person in-charge of the goods] a reasonable opportunity of being heard and after having held such inquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or declaration, [a penalty equal to thirty percent of the value of such goods.]"

Rule-53 Declaration 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 the 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 Govt. 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 Govt. 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.

(b) Any dealer or person other than a registered dealer,-

(i) who imports any taxable goods as may be notified by the State Gove; or

(ii) who receives any goods as may be notified by the Sate Govt. 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 Sate Govt. of the value of Rs. 10,000/- or more, for use, consumption or disposal within the State;

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

(c) The driver or the other person incharge of a vehicle or carrier of goods in movement shall carry with him the documents specified 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 Incharge of the entry check post 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 person producing it, and such officer shall sent 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 Incharge of the entry checkpost or to the officer empowered under section 78, any person transporting the goods, shall, on inspection by an officer empowered under section 78 at any subsequent place, produce the countersigned and sealed copy of the aforesaid declaration along with other documents in clause (a) of sub-section (2) of section 78."

13. In my view, Rule 53 clearly postulates that a declaration form is required to be carried by an assessee duly filled in, signed and sealed despite all the other documents being available with the incharge of the vehicle. After analyzing the judgment rendered by the Hon''ble Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer (supra) as also the judgment of Hon''ble Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd. (supra), in my view, if there is requirement of carrying declaration form and the form is left blank for any reason whatsoever, then it is a clear cut case of non carrying requisite document. It is apparent that the assessee was aware that the declaration form is required to be carried, which in the instant case was duly signed by the authorized signatories of the respondent but for the reasons best known to it, all other particulars were admittedly left blank. The mandate of law and requirement is to be fulfilled. After considering the various judgments, the Hon''ble Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer (supra), observed as under:-

"In our view, the aforestated judgment in the case of D.P. Metals (supra) has no application to the present case. We are not concerned in the present case with false or forged documents/declaration. In the present case the goods in movement were carried with the blank declaration Form 18A/18C which was duly signed by the assessee. Therefore, as stated above, we hold that the goods in movement were carried without the declaration Form 18A/18C. Therefore, Section 78(2)(a) stood attracted. Moreover, in the present case, there were no special circumstances indicated by the assessee as to why the forms which were duly signed were not filled in. Therefore, in our view the above judgment in the case of D.P. Metals (supra) has no application to the facts of the present case. As stated, we are concerned with the blank declaration Form 18A/18C which has travelled with the goods in movement, though signed, was left deliberately blank. The declaration Form 18A/18C is like a return under the Income-Tax Act, 1961. The Assessing Officer completes the assessment on the basis of Form 18A/18C. If that form is left blank in all material respects then it is impossible for the A.O. to arrive at the taxable turnover of the assessee. Therefore, in our view, the judgment of this Court in D.P. Metals (supra) has no application to the present case."

14. Thus the Hon''ble Apex Court has clearly held that declaration forms 18-A/18-C, which have been duly signed by the assessee but left blank, then Section 78(2)(a) stood attracted.

15. The Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd. (supra), after considering not only the

judgment of Guljag Industries Vs. Commercial Taxes Officer (supra) and State of Rajasthan and another Vs. M/s. D.P. Metals (supra), has opined in Para No. 32 to 34 as under:-

"32. In the case of submission of false or forged document and declaration, sub-section (2) of Section 78 or sub-section (5) of Section 78 of the RST Act, 1994, what is alleged is the presentation of false or forged documents. It is with reference to submission of false or forged document or declaration. Once the documents are found to be false or forged after making an enquiry under Rule 55 of the Rules, the intention to dishonestly use them, or the bonafides in relying upon them looses significance. The user of false or forged documents in transport of goods is sufficient proof of intention to evade tax without any enquiry except contemplated in sub-section (2) of Section 78 of the RST Act, 1994, to levy penalty.

33. Section 78(2) of the RST Act, 1994 read with Rule 55 of the RST Rules, 1995, after its amendment in consequence to the judgment in State of Rajasthan And Another Vs. M/s. D.P. Metals (supra), provides for an opportunity, to be given to produce the required document and/or declaration forms complete in all respects when the goods enters or leaves the nearest check-post of the State. Sub-rule (2) of Rule 55 requires that verification or enquiry shall be completed within seven days from the date of issue of the direction, and for action, if any, warranted in the circumstances of the case, in pursuance to the direction given under sub-clause (a) of clause (4) of Section 78 of the RST Act, 1994, which provides that where any goods in movement, other than exempted goods, are without documents, or are not supported by documents as referred to in sub-section (2), or documents produced appear false or forged, the Incharge of the check-post or the officer empowered under sub-section (3), may direct the driver or the person incharge of the vehicle or carrier or of the goods not to part with the goods in any manner including by retransporting or rebooking, till a verification is done or an enquiry is made, which shall not take more than seven days.

34. The suspicion or doubt on the documents to be false or forged, per se, does not attract levy of penalty under sub-section (5) of Section 78 of the RST Act, 1994. In such case, an opportunity is to be given under Rule 55(1) of the RST Rules, 1995, to a person, to produce the required documents and/or declaration forms completed in all respects, when the goods enters or leaves the nearest check-post of the State. It is only when a person despite giving such an opportunity, is not able to produce the document and/or declaration forms completed in all respects, when the goods enters or leaves the nearest check-post of the State, or the documents are found to be false or forged, after enquiry, that a penalty may be imposed, which is a civil liability for compliance of the provisions of the Act for the purposes of checking the evasion of tax. It is thus not correct to submit that penalty for submission of false or forged document or declaration, necessarily involves adjudication, for which mens rea is

relevant, and is a necessary ingredient. Any doubts in this regard have been clarified by the Hon''ble Supreme Court in Guljag Industries Vs. Commercial Taxes Officer(supra), in which it has been clearly held in para 30, after quoting the provisions of Section 78, that;

"In the present case also the statute provides for a hearing. However, that hearing is only to find out whether the assessee has contravened Section 78(2) and not to find out evasion of tax which function is assigned not to the officer at the check-post but to the AO in assessment proceedings. In the circumstances, we are of the view that mens rea is not an essential element in the matter of imposition of penalty under Section 78(5)."

16. Therefore, in my view, the question in the present matter is squarely answered by the judgment of the Hon''ble Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer (supra) and Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd. (supra).

17. In this case, admittedly an opportunity was granted by the AO to the assessee of proving its case which included filling up of the declaration form, which the assessee now claims before this Court, therefore, I am not persuaded with the argument advanced by counsel for the assessee that after almost 15 years, the matter may be remitted back to the AO for rectifying the deficiency/ discrepancy which remained in the declaration form ST-18A. In my view, when an opportunity was already granted, second opportunity, in the facts and circumstances of the case and that too after fifteen years, is not required to be given.

18. I have gone through the judgments rendered by this Court in the case of CTO Vs. Jain Tube (supra) and other judgments relied upon by counsel for the assessee which have restored the matter back to the AO but in my view, in the light of the judgment rendered by the Larger Bench of this Court in the case of Assistant Commercial Taxes Officer Vs. M/s. Indian Oil Corporation Ltd. (supra), which is binding and for the reason in earlier paras, I am not persuaded with the arguments advanced by counsel for the respondent-assessee to allow fresh opportunity.

19. The judgments relied upon by counsel for the respondent-assessee in the case of Arihant Builders, Developers and Investors Pvt. Ltd. Vs. Income Tax Appellate Tribunal and others (supra); Essar Shipping Ports and Logistics Limited Vs. Commercial Tax Officer (FAC), Chennai (supra) and Union of India and others Vs. Kaumudini Narayan Dalal and another (supra) have been considered by me and in my view, the judgments are distinguishable on facts as in the case of Arihant Builders, Developers and Investors Pvt. Ltd. Vs. Income Tax Appellate Tribunal and others (supra), the Hon''ble MP High Court expressed that the Tribunal cannot give contradictory decisions with regard to the same assessee and based on the same set of facts. In the case of Essar Shipping Ports and

Logistics Limited Vs. Commercial Tax Officer (FAC), Chennai (supra), the Madras High Court held that the lower authority is bound by the decision of higher authority and the assessing authority is bound by the decision of Tribunal on same facts. In the case of Union of India and others Vs. Kaumudini Narayan Dalal and another (supra), the Hon''ble Apex Court held that "If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth Vs. Union of India and Others, (1993) 113 CTR 75 : (1993) 204 ITR 866 , it should have preferred an appeal there against and instructed counsel as to what the date of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessee without just cause." In so far as the above proposition is concerned, it is well settled but in my view, all the three authorities are inapplicable on the facts of the instant case in view of the judgment of Hon''ble Apex Court in Guljag Industries (supra) and Larger Bench on this Court in M/s. Indian Oil Corporation Ltd. (supra) which are binding of this Court. In my view, for the above reasons the order of the Tax Board is required to be reversed and is accordingly reversed, quashed and set aside. The question of law is answered in favour of the Revenue and against the assessee with no order as to costs.