(2013) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 346 of 2008

Assistant Commercial Taxes Officer APPELLANT

Vs

Rathi Bars Ltd. RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2014) 67 VST 430

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

Bench : Single Bench

Judgement

J.K. Ranka, J.—This revision petition u/s 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act") has been filed by the petitioner-Department assailing the order of the Rajasthan Tax Board, Ajmer, (in short, "the Board") dated July 11, 2007 in Appeal No. 2542 of 2005 wherein, the Tax Board affirmed the order passed by the Deputy Commissioner (Appeals), Commercial Taxes, Bharatpur, dated November 29, 2004, who had deleted the penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (for short, "the Act of 1994") amounting to Rs. 39,895. The revision petition was admitted on March 19, 2008 on the following substantial questions of law:

"(i) Whether the impugned order of learned Tax Board ignoring the material evidence on record and considering the material which is not part of the record, vitiates the order under law?

(ii) Whether, in the facts and circumstances of the case and on proper interpretation of the provisions of section 78(5) of the Act, the in-charge of the check-post or the officer empowered has conditional/restricted authority to exercise powers while imposing penalty equal to 30 per cent of the value of such goods?

(iii) Whether the production of S. T. 18-C is a matter of choice and convenience for the dealer and whether the provisions under rule 54 of the Rules of 1995 are mandatory or directory?

(iv) Whether the appellate authority and the learned Tax Board can circumvent the provisions of law by drawing their own interpretation and conclusions which in fact were never intended by the Legislature?

(v) Whether the appellate authorities can interfere in the order passed by the assessing authority to the extent that the penalty imposed is excessive and in matters of incomplete/unfilled form S. T.-18C can be ignored by the assessing authority so as to take a lenient view against the intention of the Legislature and whether such view is sustainable or is contrary to the mandatory provisions of section 78(5) which provides for 30 per cent of penalty on valuation of goods?"

2. The facts of the case are not in dispute as the goods were being carried by the respondent-assessee and was intercepted by the authorised officer of the Department. The relevant documents were produced and so far as the fact with regard to declaration form ST-18C is concerned, all the columns of the form were filled in however, in the column of invoice number and the date was not filled in and left blank on account of inadvertence. When the assessing officer, found the columns blank, he was not satisfied as according to him, the declaration form should be properly filled in, as it was mandatory on the part of the respondent-assessee to fill in all the columns when the goods were carried. Therefore, as per the A. O. there was violation of provision of rule 54 of the Rules, and accordingly, he imposed the penalty holding that there was intention of tax evasion by the respondent-assessee.

3. On appeal, by the respondent-assessee, the learned DC(A) deleted the penalty imposed by the learned assessing officer by accepting the appeal of the respondent-assessee.

4. Being dissatisfied with the order passed by the learned DC(A), the matter was further carried in appeal, by the petitioner-Department before the Tax Board, who after going through the material on record, confirmed the order passed by the DC(A) and rejected the appeal of the petitioner-Department, by holding that all the relevant documents were produced and only one column of the declaration form No. ST-18C was found to be blank, therefore, it could be on account of inadvertence and in such circumstances, it cannot be said that there was intention of tax evasion by the respondent-assessee.

5. Ms. Tanvi Sahai, appearing on behalf of R. B. Mathur, learned counsel for the petitioner-Department, submitted that no doubt, all the relevant documents were produced at the time of checking but one or two columns of the declaration form No. ST 18C was found to be blank and it is mandatory that the declaration form ought to have been filled in correctly and properly. Since, it was not properly filled in and columns were left blank, it shows intention of tax evasion of the respondent-assessee. She further submitted that the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, , has come to the conclusion that all the material particulars are required to be filled and since the judgment of the honourable apex court is subsequent to the order of the Tax

Board therefore in the light of the said judgment, when column is left blank therefore order of the Tax Board as also the Deputy Commissioner (Appeals) deserve to be reversed. She submitted that leaving one column blank may be on account of inadvertence but not filled in therefore it will fall within the material particulars as observed by the honourable apex court. She further submitted that mens rea is not at all to be looked into in the light of the aforesaid judgment as the honourable apex court has come to the conclusion that in case like this, mens rea is not at all relevant. Accordingly, the counsel pleaded for reversal of the said order.

6. Despite notice one appeared on behalf of the respondent.

7. I have gone through the arguments advanced by the counsel for the petitioner-Department as also the judgment of the honourable apex court and the orders impugned and according to me, the judgment of the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, though applies to a case like this but one has to analyse what would be the "material particulars" in the light of the judgment rendered in the case of Guljag Industries Vs. Commercial Taxes Officer, ; para 20 in SCC of the judgment of the honourable apex court is relevant to quote hereunder so as to come to the conclusion as to what would be "material particulars" in the light of the said judgment (page 28 in VST):

"20. The facts enumerated above in Civil Appeal No. 5197 of 2005 are the lead case in which one finds that the goods in movement were carried with blank declaration forms though signed by the consignee. The material particulars like quality, weight and description of the goods required to be filled in by the assessee (consignee) were left blank. Therefore, in this batch of civil appeals we are concerned with cases where the goods in movement were carried with blank form ST 18A. In our view, on the face of it there was contravention of section 78(2) of the RST Act 1994...''

8. When we go by the aforesaid judgment rendered by the honourable apex court, what would be "material particulars'''' according to me, would be filling in columns where quality, weight, description on the goods and value is required to be clearly filled in and stated. In the said judgment, at one place, the honourable apex court has also mentioned about filling of value in the declaration as important so if all these are filled in the declaration form ST18C then according to me, all other particulars though may be important but will not be relevant for imposition of penalty in a case like this, in the present case, only invoice number and date was left to be filled in and according to me, in so far as the present case is concerned, it is distinguishable to the judgment rendered by the honourable apex court. When all other relevant columns, i.e., "material particulars" in the light of the judgment of the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, were filled in therefore, in my view, in the present case, I come to the conclusion that merely not filling in the invoice number and date will not fall in the category of "material particulars" as

defined by the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer,

9. Had other material particulars not being filled in, possibly the argument advanced by the counsel for the petitioner-Department that the form could have been re-used but when all "material particulars" namely'' quality, weight description of the goods, value, name of the transporter, name of the consignor and consignee had been duly filled in, apprehension of the Department that the form could have been re-used, is not sustainable, only because invoice number and date was left to be filled in, in my opinion, the form could not have been re-used. Therefore, in my view, judgment of the honourable apex court in Guljag Industries Vs. Commercial Taxes Officer, in so far as the present facts and circumstances are concerned, is not applicable and distinguishable.

10. In the light of the aforesaid facts and the distinguishing features of the case, in my view, the Tax Board as well as the Deputy Commissioner (Appeals), were justified in arriving at the conclusion of deleting the penalty imposed against the respondent-assessee, therefore, the order passed by the Tax Board, is confirmed. Even otherwise, it is basically a finding of fact and questions of law involved in the matter are answered in favour of the respondent-assessee and against the petitioner-Department. Resultantly, the revision petition stands dismissed.