
(2004) 08 RAJ CK 0033
In the Rajasthan High Court

Assistant Commercial Taxes Officer	Vs	APPELLANT
Rishab Special Yarns Limited		RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

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

Citation : (2007) 11 VST 32

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

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 May 6, 2002 (annexure 5) passed by the Rajasthan Tax Board, Ajmer in Appeal No. 532 of 2002 by which the learned Tax Board allowed the second appeal filed by the respondent and set aside the order dated March 18, 2002 (annexure 4) passed by the Deputy Commissioner (Appeals)-II, Jaipur, as well as penalty order dated July 17, 2000 (annexure 3) passed by the Assistant Commercial Taxes Officer, Flying squad, Raniwada (hereinafter referred to as the "assessing authority") whereby the learned assessing authority imposed penalty of Rs. 87,875 against the respondent.

2. It arises in the following circumstances:

On July 6, 2000, the vehicle No. GJ-9/V-7127 (hereinafter referred to as the vehicle in question), which was carrying 69 carton of yarn belonging to the respondent M/s. Rishab Special Yarns Limited, was intercepted and checked by the petitioner-Assistant Commercial Taxes Officer and during checking, it was found that the declaration form S.T. 18C was not accompanied with the goods. Since the goods in transit were not accompanied with the declaration form S.T. 18C, therefore, a notice dated July 6, 2000 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 dated July 17, 2000 (annexure 2) to the said show cause notice was filed by the respondent 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 S.T. 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 S.T. 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 July 17, 2000 (annexure 3) imposed the penalty of Rs. 87, 875 on the respondent-dealer.

Aggrieved from the said order dated July 17, 2000 (annexure 2), the respondent-dealer preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Jaipur, u/s 84 of the Act of 1994 and through judgment dated March 18, 2002 (annexure 4), the Deputy Commissioner (Appeals), dismissed the appeal of the respondent and affirmed the order of the assessing authority dated July 17, 2000 (annexure 3) holding inter alia that the respondent was guilty of violating the provisions of Section 78(2) of the Act of 1994.

Aggrieved from the said judgment dated March 18, 2002 (annexure 4) and order dated July 17, 2000 (annexure 3), the respondent preferred second appeal before the Rajasthan Tax Board, Ajmer, and the Rajasthan Tax Board, Ajmer, through impugned judgment dated May 6, 2002 allowed the appeal of the respondent and set aside the findings recorded by the learned first appellate authority through judgment dated March 18, 2002 (annexure 4) and the findings of the learned assessing authority through order dated July 17, 2000 (annexure 3). The Rajasthan Tax Board further came to the conclusion since there was no mens rea on the part of the respondent to evade tax, therefore, penalty imposed on the respondent could not be sustained.

Aggrieved from the said judgment dated May 6, 2002 (annexure 5) passed by the Rajasthan Tax Board, the petitioner has filed 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 S.T. 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 judgment dated May 6, 2002 (annexure 5) passed by the Rajasthan Tax Board cannot be sustained and is 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 v. Voltas Limited [2000] 120 STC 217(SB judgment)

(ii) Assistant Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 123 STC 172 (DB judgment)

(iii) Parasnath Granite India Ltd. Vs. State of Rajasthan and Another,

(iv) Assistant Commercial Taxes Officer v. Mahaveer Chand Jain and Co. [2000] 120 STC 212 (SB)

(v) Assistant Commercial Taxes Officer Vs. J.P. Singh and Sons,

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 July 6, 2000 when the vehicle in question carrying the goods in question of the respondent was checked by the petitioner, the declaration form S.T. 18C was not found. However, rest papers were found valid and correct one.

7. There is also no dispute on the point that later on along with the reply (annexure 2) to the show cause notice, the declaration form S.T. 18C was produced by the respondent-dealer.

8. The Rajasthan Tax Board through judgment dated May 6, 2002 (annexure 5) came to the conclusion that since the requisite form S.T. 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.

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 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 willfully, maliciously, fraudulently, recklessly, negligently, corruptly, feloniously and wantonly.

11. 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.

12. This Court in Assistant Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 123 STC 172 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.

13. Thus, it can be concluded that mens rea is an essential ingredient for imposing penalty u/s 78(5) of the Act of 1994 for 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.

14. The division Bench of this Court in the case of Parasnath Granite India Ltd. Vs. State of Rajasthan and Another, 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 Prem Raj v. AGIO [2002] 3 Tax Update 51 and ACTO v. Shiv Shambhu [2003] 7 Tax Update 136 where contrary view was taken.

15. In the present case, from the materials available on record, it appears that no doubt at the time when the checking was made, the declaration form S.T. 18C was not accompanied with the goods, but since other papers were found genuine, valid and correct one and further, later on, declaration form S.T. 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. Therefore, the findings of the Rajasthan Tax Board that there was no mens rea or mala fide intention on the part of the respondent to evade tax and thus, penalty imposed without establishing any mens rea on the part of the respondent was not in accordance with law, 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.

16. 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.