(2010) 10 RAJ CK 0024

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 219 of 2008

Assistant Commercial Taxes Officer APPELLANT

Vs

Smilex Pharmaceuticals RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 78(2), 78(5)

Citation : (2011) 39 VST 505

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the parties.

2. Briefly stated the facts of the case are that on 17th August, 2001 Vehicle No. RJ14-1G-3900 was checked. Looking to the nature of goods and transaction, it was found that declaration form ST-18C should have been accompanied with the goods, but the same was not accompanied along with other documents. Therefore, the Assessing Officer issued a notice to show cause to levy penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994. The assessee submitted his reply and contended that he was not aware that declaration form ST-18C should have been accompanied with other documents. Therefore, the same was not given. However, declaration form ST-18C was submitted before the Assessing Officer along with reply to show cause notice. Since the Assessing Officer was of the view that declaration form ST-18C was not accompanied with the goods at the time of checking of goods, therefore, there is a breach of Section 78(2) of the Act and consequently, he levied penalty u/s 78(5) of the Act. Being aggrieved with the same, an appeal was preferred. The Dy. Commissioner(Appeals) allowed the appeal of assessee vide order dated 28th September, 2005 on two grounds; first, that order u/s 78(5) of the Act could not have been passed against ''owner of the goods'' and second, that the declaration form ST-18C had already been submitted before the Assessing Officer along with reply to show cause notice by

the assessee.

3. Being aggrieved with the order of Dy. Commissioner(Appeals), the A.C.T.O. Filed appeal before the Rajasthan Tax Board. The Tax Board vide its order dated 23rd March, 2007 dismissed the appeal only on one ground that since the vehicle was checked before 22nd March, 2002, the date when Section 78(5) was amended, therefore, penalty order could not have been passed against the owner of the goods. The said order of the Tax Board is under challenge in this revision petition.

4. Submission of the learned Counsel for the petitioner is that reason assigned by the Tax Board for dismissing the appeal of the revenue is contrary to the judgment of Hon''ble Apex Court rendered in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., and present case is fully covered by the aforesaid decision of the Apex Court, therefore, the impugned order of Tax Board be set aside.

5. Learned Counsel for the assessee contended that order of Assessing Authority was set aside by the Dy. Commissioner (Appeals) on two grounds; first is that order of penalty could not have been passed against owner of the goods and second, is that declaration form ST-18C had already been submitted before the Assessing Authority along with reply to show cause notice. The Tax Board did not consider the second ground for setting aside the penalty order i.e. the declaration form ST-18C had already been filed along with reply to show cause notice by the assessee before the Assessing Authority and the said issue is already settled by Hon''ble Apex Court in State of Rajasthan and Another Vs. M/s D.P. Metals, Therefore, even if reason assigned by Tax Board for dismissing the appeal of revenue is covered by ACTO v. Bajaj Electrical Ltd. (supra) then the present revision of revenue is liable to be dismissed being covered by decision of Apex Court in State of Raj. and Anr. v. D.P. Metals (supra).

6. I have considered the submissions of learned Counsel for both the parties and examined the orders passed by the Assessing Officer, Dy. Commissioner(Appeals) and Tax Board minutely and I find that although the Tax Board committed an illegality in dismissing the appeal of the revenue on the ground that order u/s 78(5) could not have been passed against owner of the goods in view of ratio laid down by Hon''ble Apex Court in ACTO v. Bajaj Electrical Ltd. (supra), but it is an admitted fact, which has not been disputed by the learned Counsel for the revenue or petitioner also, that declaration form ST-18C had already been produced before the Assessing Officer along with reply to show cause notice, but the said point has not been considered by the Tax Board while rejecting the appeal of petitioner. In State of Raj. and Anr. v. D.P. Metals''s case (supra), the Hon''ble Apex Court considered the provisions of Section 78(5) and 78(2) of the Act and held that "if by mistake some of the documents are not readily available at the time of checking, principle of natural justice may require some opportunity being given to produce the same". Since the assessee produced the declaration form ST-18C before the Assessing Officer in response to show cause notice then

the Dy. Commissioner (Appeals) was fully justified in setting aside the order of the Assessing Authority levying penalty u/s 78(5) of the Act.

7. In these circumstances, I find that although the order of the Tax Board is liable to be set aside in view of judgment of Hon''ble Apex Court in the case of ACTO v. Bajaj Electrical Ltd. (supra), but order of the Assessing Authority was rightly set aside by Dy. Commissioner(Appeals), in view of judgment of Hon''ble Apex Court in State of Raj. and Anr. v. D.P. Metals''s case (supra).

8. Consequently, the impugned order of Tax Board is set aside, but revision of petitioner/revenue is also dismissed in view of judgment of Hon''ble Apex Court in the case of State of Raj. and Anr. v. D.P. Metals (supra). The order of Dy. Commissioner(Appeals) to above extent is upheld. Parties are directed to bear their own cost.

