(2013) 11 RAJ CK 0002

In the Rajasthan High Court

Case No : Sales Tax Revision No. 197 of 2010

Assistant Commercial Taxes Officer APPELLANT

Vs

Suresh Chand-Jagdish Chand RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 73 VST 284

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Judgement

Alok Sharma, J.—This revision petition challenges the order dated April 4, 2007 passed by the Rajasthan Tax Board, Ajmer, upholding the orders dated November 17, 2004 passed by the Deputy Commissioner (Appeals) setting aside a penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter "the Act of 1994") as visited upon the respondent-assessee by the assessing officer under his order dated May 11, 1999. The facts of the case are that vehicle No. HR-2 6-GA-1012 was checked at Aakeda Road, Bhiwadi (Rajasthan) on May 7, 1999 while it was transporting gram (channa) a notified goods to Delhi. The documents submitted by the driver of the aforesaid vehicle were incomplete with reference to the provisions of section 78(2)(a) which, inter alia, requires that the driver or the person in-charge of a vehicle or carrier or of goods in movement shall carry with him the goods vehicle record including "challans" and "bilties", bills of sale or dispatch memos and prescribed declaration forms. In pursuance of clause (ii) of rule 54(1) of the Rajasthan Sales Tax Rules, 1995 (hereinafter "the Rules of 1995"), the State of Rajasthan issued a Circular No. F.4(4) FD/Tax Divn./99-161, dated March 26, 1999 whereunder gram (channa) the goods in issue stood notified. Consequently when under transport gram (channa) was required to be supported and accompanied by Form ST-18C, Form No. ST-18C was not found with the goods at the checking of May 7, 1999. In view of the assessee thus being in default of its obligation u/s 78(2)(a) of the Act of 1994, the assessing officer after notice requisite u/s 78(5) of the Act of 1994 visited the assessee with penalty in the sum of Rs. 46,313 for contravention of section 78(2)(a) of the

Act of 1994.

2. Aggrieved by the order of penalty dated May 11, 1999 passed by the assessing officer, an appeal was filed u/s 84 of the Act of 1994 before the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) vide his order dated November 17, 2004 set aside the order of penalty dated May 11, 1999 solely on the ground that the assessing officer had erred in visiting the owner of the goods, as against the driver of the vehicle, with penalty owing to the owner of the goods not being liable u/s 78(5) of the Act of 1994 prior to its amendment on March 23, 2002.

3. The petitioner aggrieved by the order dated November 17, 2004 passed by the Deputy Commissioner (Appeals) preferred an appeal before the Rajasthan Tax Board, Ajmer, u/s 83 of the Act of 1994. The Rajasthan Tax Board, Ajmer, even while it apparently disagreed with the reasoning of the Deputy Commissioner (Appeals) in absolving the assessee, however proceeded in effect to uphold the order in setting aside the penalty on the sole ground that the goods in transit were tax-paid and therefore, not required to be accompanied by a declaration under Form ST-18-C.

4. Mr. R.B. Mathur, learned counsel appearing for the petitioner-Department, has submitted that the reasoning of the Rajasthan Tax Board, Ajmer, in setting aside the penalty u/s 78(5) of the Act of 1994 for reason of the goods in transit being tax paid and hence not required in law to be accompanied by form ST-18-C is contrary to the decision of the honourable Supreme Court in the case of Guljag Industries Vs. Commercial Taxes Officer, In its aforesaid judgment, the honourable Supreme Court has held that "It is not open to the assessees to contend that in certain cases of inter-State transactions they were not liable in any event for being taxed under the Rajasthan Sales Tax Act, 1994 and, therefore, penalty for contravention of section 78(2) cannot be imposed. As stated hereinabove, declaration has to be given in form 18A/18C 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". Counsel further submits that in any event on the merits of the case the goods in transit being gram (channa) were required in terms of the notification dated March 26, 1999 issued under rule 54(1)(ii) of the Rules of 1995 to be accompanied by a declaration in form ST-18-C. Counsel submits that the requirement of declaration form ST-18-C does not relate to a taxable event but is in the nature of management information system retained by the State Government to determine as to whether the goods exported had been visited with tax due there against and there is no other mechanism to ensure tax compliance. It has been submitted that this necessity of declarations form such as in ST-18-C in the course of export of goods has been emphasized by the honourable Supreme Court in the case of Guljag Industries Vs. Commercial Taxes

Officer, He submits that in view of the aforesaid enunciation of law by the honourable Supreme Court, the judgment dated April 4, 2007 passed by the Rajasthan Tax Board, Ajmer upholding the order dated November 17, 2004 passed by the Deputy Commissioner (Appeals) contrary thereto is liable to be quashed and set aside and the order of penalty passed by the assessing authority on May 11, 1999 restored.

5. Mr. Sarvesh Jain, counsel appearing for the non-petitioner (respondent-assessee) has however, supported the judgment of the Rajasthan Tax Board, Ajmer. It has been submitted by him that the gram (channa) was tax-paid and therefore there was no warrant for the requirement of declaration Form ST-18C accompanying the said goods in transit. Counsel has placed reliance on a Circular No. F. 29(1)(6) DCAE/86/7779 dated December 8, 1986 to contend that in terms of the said circular allegedly referable to rule 54(1)(i) of the Rules of 1995 the tax-paid goods are not required to be accompanied by a declaration in form ST-18C when they are being transported outside the State. Counsel further submitted that even though a show-cause notice was issued to the assessee and reply, filed thereto but no inquiry was conducted and on this ground also the order of penalty dated May 11, 1999 passed by the assessing officer deserves to be set aside for being in contravention of principles of natural justice and the judgment of the Rajasthan Tax Board, Ajmer, dated April 4, 2007 setting aside the penalty u/s 78(5) of the Act of 1994 be upheld and not be interfered with.

6. Heard the counsel for the petitioner and the non-petitioner-assessee.

7. In my considered opinion, in view of the judgment of the honourable court in the case of Guljag Industries Vs. Commercial Taxes Officer, it is mandatory for goods in transit whatever be the purpose of transit, to be accompanied by the requisite declaration form which in goods under export from the State of Rajasthan is Form ST-18C. Section 78(2)(a) of the Act of 1994, inter alia, requires the notified goods in movement to be accompanied by requisite declarations. Rule 54(1)(ii) of the Rules of 1994 makes it clear that the goods duly notified in the course of inter-State trade or commerce shall be accompanied by the requisite declaration. In pursuance of rule 54(1)(ii), notification dated March 26, 1999 has been issued by the State which, inter alia, specifically includes gram (channa) the goods which were in transit, is the case before this court. The goods in transit by the assessee from Rajasthan to Delhi on May 7, 1999 was therefore, required to be accompanied by form ST-18C. This aspect of the matter has been overlooked by the Deputy Commissioner (Appeals) as also by the Rajasthan Tax Board, Ajmer and the conclusions that merely because that the goods in transit were tax-paid, they were not required to be accompanied by form ST-18C is palpably erroneous. I also do not find any merit in the submission of the counsel for the non-petitioner that the order of penalty dated May 11, 1999 passed by the assessing officer ought not to be revived on the ground that it has been passed in contravention of the principles of natural justice with no inquiry being conducted in the matter albeit a show-cause notice

was issued to the assessee and reply thereto filed. In my considered opinion the principles of natural justice are not a strait jacket formula and there has to be substance in the reply to the show-cause notice and a dispute on facts for an inquiry to be held. In the instant case in view of the obtaining legal position with regard to the necessity of grams (channa) in transit in the course of inter-State commerce being accompanied by Form ST-18C with reference to section 78(2)(a) of the Act of 1994 and rule 54(1)(ii) of the Rules of 1995, there was no enquiry to be conducted on fact when it was not disputed that gram (channa) was being transported from Rajasthan to Delhi in the course of inter-State commerce. No prejudice in any event has been caused as the non-petitioner assessee who was issued a show-cause notice and reply thereto obtained. In the obtaining state of facts and law as detailed hereinabove, no purpose would be served by remitting the matter to the assessing authority to conduct an inquiry afresh. The argument based on the denial of the principles of natural justice for upsetting the order of penalty u/s 78(5) of the Act of 1994 passed by the assessing officer on May 11, 1999 and upholding the order dated November 17, 2004 passed by the Deputy Commissioner (Appeals) and the order dated April 4, 2007 passed by the Rajasthan Tax Board, Ajmer, is also liable to be negated. For the aforesaid reasons, in my considered opinion, this sales tax revision deserves to be allowed. The judgment dated April 4, 2007 passed by the Rajasthan Tax Board, Ajmer, as also the order dated November 17, 2004 passed by the Deputy Commissioner (Appeals) are set aside and the order dated May 11, 1999 passed by the assessing officer is restored.