
(2010) 10 RAJ CK 0023

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 201 of 2008

Assistant Commercial Taxes Officer, Flying Squad

APPELLANT

Vs

Lloyd Electric and Engineering Ltd.

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

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

Citation : (2011) 41 VST 25

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. Briefly stated the facts of the case are that on 9th June, 1999 Vehicle No. RJ02/G 3428 was checked by the authorised officer and it was found that declaration form ST-18C was not accompanied with the goods carrying in the vehicle. Therefore, the Assessing Officer issued a notice for levying penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994. In response to show cause notice, the dealer appeared and submitted his written reply contending that goods in question were meant for job work and these goods were rejected, therefore, they were being sent back. Therefore, declaration Form ST-18C was not annexed with other documents. Assessee annexed the declaration form ST-18C along with reply to show cause notice.

3. The learned Assessing Officer was of the view that Form ST-18C was not accompanied with the goods carrying in the vehicle at the time of checking of the vehicle, therefore, there is violation of the mandatory provisions and consequently he levied penalty to the tune of Rs. 23,400/- at the rate of 30% on Rs. 78,000/- i.e. value of the goods. Being aggrieved with the same the assessee filed an appeal. The Dy. Commissioner(Appeals) allowed the appeal vide order dated 5th January, 2004 on the ground that declaration form ST-18C was

produced before the Assessing Officer along with reply to show cause notice, therefore, in view of judgment of the Hon''ble Apex Court and Tax Board (referred in the order), the penalty was liable to be set aside. Revenue preferred appeal before the Rajasthan Tax Board, which was decided along with five other appeals and vide its common order dated 28th February, 2005, the Rajasthan Tax Board dismissed the appeal of the revenue on the ground that truck was checked before 22nd March, 2002, the date when amendment was made in Section 78(5) of the Act. Therefore, penalty could not have been levied against the owner of the goods as the words "owner of the goods" were inserted in Sub-section (5) of Section 78 w.e.f. 22nd March, 2002. It is relevant to mention that the reason assigned by Dy. Commissioner(Appeals) for setting aside the penalty order was neither referred and discussed nor set aside or reversed by the Tax Board.

4. Being aggrieved with the order of Tax Board, the revenue has preferred this revision petition before this Hon''ble Court.

5. Submission of the learned Counsel for the petitioner is that Tax Board has committed illegality in rejecting the appeal of the Department on the ground that order u/s 78(5) of the Act could not have been passed against owner of the goods before 22nd March, 2002, the date when Section 78(5) was amended, whereas the Hon''ble Apex Court in Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., has held that the expression "person incharge of the goods" used in Section 78(5) includes the owner of the goods and amendment made in Section 78(5) on 22nd March, 2002 was only clarificatory provision, therefore, present case is fully covered by the judgment of the Hon''ble Apex Court in the case of ACTO v. Bajaj Electrical Ltd.(supra), therefore, the impugned order of the Tax Board be set aside.

6. I have considered the submission of the learned Counsel for the petitioner and examined the impugned judgments passed by the Tax Board, Dy. Commissioner(Appeals) and the Assessing Authority. No doubt it is correct that the Tax Board dismissed the appeal of the department on the ground that the order u/s 78(5) of the Act could not have been passed against owner of the goods as vehicle in the present case was checked before 22nd March, 2002, the date when Section 78(5) was amended and present case is fully covered by the decision of the Hon''ble Apex Court in ACTO v. Bajaj Electrical (supra). The Apex Court has considered the provisions of Section 78(5), before and after amendment made therein on 22nd March, 2002 and held that the expression "the person incharge of the goods" u/s 78(5) would include the "the owner of the goods". The amendment made in Section 78 (5) w.e.f. 22nd March, 2002 is only clarificatory provision made by the legislature. In these circumstances, in my view, the order passed by the Rajasthan Tax Board is liable to be set aside.

7. However, from the orders passed by Assessing Authority as well as Dy. Commissioner (Appeals), it is clear that declaration form ST-18C was produced before the Assessing Authority along with reply to show cause notice, but

Assessing Authority was of the view that form ST-18C was not accompanied with the goods at the time of checking of the vehicle, therefore, there is breach of provisions of Section 78(2) of the Act, consequently, penalty is leviable. The order of Assessing Authority was set aside by the Dy. Commissioner(Appeals) on the ground that, since declaration form ST-18C has been produced along with reply to show cause notice before the Assessing Authority, therefore, in view of the judgment of the Hon''ble Apex Court and this Court, the penalty is liable to be set aside and the same was set aside.

8. It is relevant to mention that so far as question whether order could have been passed against owner of the goods in place of incharge of the goods is concerned, the same was never agitated, discussed and decided by the Dy. Commissioner(Appeals) and this was the sole question involved before the Rajasthan Tax Board in the present case but the Tax Board neither considered the said question nor decided the same but on other ground, as mentioned above, dismissed the appeal of the revenue.

9. Hon''ble Apex Court in State of State of Rajasthan and Another Vs. M/s D.P. Metals, considered the provisions of Section 78(5) and 78(2) of the Rajasthan Sales Tax Act, 1994 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". It was further held that where despite opportunity having been granted u/s 78 (5), the requisite document is not produced then it would clearly prove the guilty intent.

10. So far as present case is concerned, the Assessing Officer has mentioned in its order dated 10th June, 1999 that assessee has produced the required declaration form ST-18C along with reply to show cause notice, but penalty was levied by him on the ground that it should have been accompanied with the goods at the time of checking of the vehicle. The Dy. Commissioner (Appeals) held that Form ST-18C was produced along with reply to show cause notice, as per State of Raj. and Anr. v. D.P. Metals's case (supra) the assessee had already produced the declaration form ST-18C along with reply to show cause notice, therefore, the present case was fully covered by the decision of the Apex Court in DP Metals (supra).

11. Learned Counsel for the revenue does not dispute this factual aspect that declaration form ST-18C was produced by the assessee before the Assessing Authority along with reply to show cause notice. In these circumstances, the Assessing Officer was not right in levying penalty u/s 78(5) of the Act.

12. In view of above discussions, it is clear that although the order passed by the Tax Board is contrary to facts and law laid down by Hon''ble Apex Court in ACTO v. Bajaj Electrical (supra), but it is also clear that order of Assessing Authority was also contrary to law laid down by the Apex Court in State of Raj. and Anr. v. D.P. Metals(supra), therefore, it was rightly set aside by the Dy. Commissioner (Appeals). In these circumstances, I find that order of the Tax Board is liable to

be set aside by this Court.

13. Consequently, the 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 State of Raj. and Anr. v. D.P. Metals (supra). The order of Dy. Commissioner (Appeals) is upheld. Parties are directed to bear their own cost.