(2013) 08 RAJ CK 0041

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 397 of 2008

Assistant Commercial Taxes Officer, Flying Squad	APPELLANT
Vs	
M/s. Shri Magru. Varun Traders and Another	RESPONDENT

Date of Decision : 01-08-2013

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

Citation : (2014) 67 VST 224

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

Bench : Single Bench

Advocate : Tanvi Sahai for Mr. R.B. Mathur, for the Appellant; Vivek Singhal, for the Respondent

Judgement

J.K. Ranka, J.—Instant Sales Tax Revision Petition, u/s 86 of the Rajasthan Sales Tax Act, 1994 (In short ''The Act'')has been filed by the petitioner-department, assailing the order passed by the Rajasthan Tax Board, Ajmer (In short ''The Tax Board'') dated 3.7.2007 in Appeal No. 665/2006, whereby it rejected the appeal filed by the petitioner-department by upholding the order passed by the learned Deputy Commissioner (Appeals), Commercial Taxes Department, Bharatpur, (in short ''The DC(A), dated 11.5.2005 who had quashed and set-aside the order of penalty passed by the learned ACTO (FS), (In short ''The ACTO'') amounting to Rs. 30,290/- u/s 78(5) of the Act. The revision petition was admitted by this Court on 12.5.2008 and following substantial questions of law were framed:--

(i) Whether the impugned orders 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 the Section 78(5) of the Act of 1994 the assessing authority was justified in passing the order imposing tax penalty and interest?

(iii) Whether the Appellate Authority and the learned Tax Board can circumvent the provisions of law by drawing their own interpretation and conclusions which infact were never intended by the legislature?

(iv) Whether the Appellate Authority can interfere in the order passed by the Assessing Authority to the extent that the penalty imposed is excessive and the lenient view should be taken, whether such view is sustainable or is contrary to the mandatory provisions of section 78(5) which provides 30% penalty on valuation of the goods?

2. The brief facts leading to this case are that on 5.1.2001 a vehicle bearing No. RJ-02G-0552 was intercepted by the ACTO (FS) near Khushkheda and checking was made. On checking, 256 bags of rice were found in the vehicle. On enquiry, the driver of the vehicle produced Bill No. 12474 dated 4.1.2001, Builty GR No. 1916 dated 4.1.2001 and according to these documents, the goods were being taken to Khairthal Mandi from Delhi. Since, the goods were in the category of notified list, the declaration Form No. ST-18-A was essential to be produced with the goods. As the declaration form No. ST-18A was not available with the driver, the ACTO was not satisfied and held that the goods were transmitted with the intension of tax evasion and imposed penalty as aforesaid u/s 78(5) of the Act.

3. Dissatisfied with the order passed by the ACTO (FS), the respondent-assessee, filed an appeal before the DC(A), Bharatpur, who after going through the material on record as well as the order passed by the ACTO (FS), deleted the amount of penalty by accepting the appeal only on the basis that there was no intention of tax evasion of the respondent assessee, following the Judgment of the Hon''ble Apex Court in the Case of State of Rajasthan and Another Vs. M/s D.P. Metals, Against the order of learned DC(A), the petitioner-department, filed appeal before the Tax Board, who also upheld the order passed by the DC(A).

4. Hence, this revision petition.

5. Ms. Tanvi Sahai, appearing on behalf of Mr. R.B. Mathur, learned counsel for the petitioner-department, submits that carrying of 256 bags of rice without having declaration form No. ST-18A was totally unjustified and unfair on the part of the respondent-assessee. Counsel for the petitioner submits that there was a Notification issued by the Government of Rajasthan, dated 4.12.2000 whereby there is requirement of carrying declaration form No. ST-18A in a case where the rice is transmitted and such plea could not have been taken by the respondent-assessee that the respondent was not aware of the provisions of law. She further submitted that both the lower Appellate Authorities have decided the matter in a summary manner by deleting the penalty imposed by the ACTO (FS) while the facts ought to have been properly considered. She further submitted that compliance of the provisions of the Act is mandatory and in the light of the Judgment of the Apex Court in the Case of Guljag Industries Vs. Commercial Taxes Officer, the Hon''ble Apex Court has come to the conclusion that declaration form No. ST-18-A must be carried with the goods and compliance of

the Act has to be fulfilled. She submitted that in the light of the said Judgment, the orders of the DC(A) and the Tax Board deserves to be reversed.

6. On the other hand, Mr. Vivek Singhal, appearing on behalf of the respondent-assessee submitted that the respondent-assessee was not aware of the Notification which came to be issued by the Government of Rajasthan on 4.12.2000 and the goods were being transmitted on 5.1.2001 thereby only one month had passed when the Notification came into force. He further submits that all the relevant documents were available at the time of checking and merely because of non-availability of declaration form, the ACTO imposed the penalty holding that there was intention of tax evasion, when it cannot be said to be a case of evasion of tax and both the lower appellate authorities have rightly deleted the penalty imposed against the respondent-assessee. Accordingly, he prays, that the order passed by the Tax Board, deserves to be upheld.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the impugned orders passed by the Tax Board and the DC(A). After going through the orders impugned, in my view, the compliance of the provisions of the Act, have to be carried in letter and spirit and when there is requirement of carrying declaration form with the goods then the mere plea that the respondent was not aware of the fact of Notification, is not proper, in my view, such a generalised user of word "were not aware" is not sufficient. Notification was issued on 4.12.2000 and compliance of Rule 53 of the Rules ought to have been made. Since, the Rice falls in the category of notified goods then there was requirement of carrying declaration form with the goods. The Hon''ble Apex Court in the case of Guljag Industries (supra), after detailed discussions, has held that the dealers ought to have carried the declaration form with the goods and came heavily on the dealers who though carried the declaration form but were blank or/and incomplete and Hon''ble Apex Court held that such declaration forms were non-est and Department was correct and justified in imposing penalty u/s. 78(5) in such cases, whereas present is a case of non carrying of the declaration form though requirement being there and according to me the claim of the Assessing Officer is stronger in the light of the judgment of Guljag Industries (supra). Had the assessee though obtained declaration form but could not produce the same on the spot and would have produced immediately on demand then certainly the judgment of Hon''ble Apex Court in the Case of State of Rajasthan & Anr. Vs. D.P. Metals (Supra) would have been applicable but the facts are totally different. Therefore, in my view, the case of Guljag Industries (Supra) is squarely applicable to the facts and circumstances of the present case and the judgment of the D.P. Metals (Supra), which has been relied upon by the Tax Board and DC(A) is not applicable and distinguishable to the facts and circumstances of the present case. The Hon''ble Apex Court has held that if declaration form is produced later on, on demand then plea of the respondent-assessee could be accepted but in the present case, neither there was a request by the respondent-assessee nor he produced the declaration form however, on the contrary, he gave explanation that he was not aware of the fact

that carrying of declaration form is necessary or mandatory, therefore, he was not having a declaration form at all. Accordingly, the revision petition is allowed. The impugned orders passed by the lower Appellate Authorities are quashed and set-aside and reversed. The order of imposition of penalty passed by the ACTO (FS), Bhiwadi, Alwar, is maintained. The question of law is answered in favour of the petitioner department and against the respondent-assessee. The stay application also stands disposed of.