(2015) 05 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil (ST) Revision Petition No. 107 of 2008

Assistant Commercial Taxes Officer, Flying Squad	APPELLANT
Vs	
Spanco Tele Systems and Solutions	RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0019

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : V.K. Mathur, for the Appellant

Judgement

Dr. Vineet Kothari, J.—The learned Tax Board by the impugned order dated 19.09.2007 had rejected the appeal of the Revenue and upheld the deletion of penalty under Section 78(5) of the RST Act upon checking of goods viz. HDPI pipes, on the ground that the bills and bilty/s were not in accordance with the statutory requirements and the goods were not accompanied with requisite documents under the applicable legal provisions, and thus upheld the order dated 24.12.2005 of the Deputy Commissioner (Appeals), Commercial Taxes Department, Jaipur, setting aside such penalty. The relevant findings of the Tax Board in the order impugned are quoted herein below:-

2. Briefly stated, the facts of the case are that on 25.09.2005, a goods vehicle numbers RJ-13-G-1882 and HP-14-3114 at Sadhuwali Check Post were intercepted and it was found that bills and and bilty/s were not in accordance with statutory requirements and the goods were not accompanied with requisite documents, therefore, on finding violation of Section 78(2) of the RST Act, penalty of Rs. 1,68,750/- and Rs. 22,500/- of tax were imposed vide order dated 02.10.2005. Upon a challenge being laid by the respondent-assessee by filing appeal before the learned Dy. Commissioner (Appeals) the same was allowed vide order dated 24.12.2005 setting aside the penalty order dated 02.10.2005. The second appeal preferred by the petitioner Revenue also came to be dismissed by the learned Tax Board vide order dated 19.09.2007.

3. The petitioner-Revenue has filed the present revision petitioner in this Court aggrieved by the said order of Tax Board.

4. The position of law with regard to the imposition of penalty under Section 78(5) of the Act is that there is no requirement in law for Revenue to establish mens rea on the part of assessee in these penalty proceedings under Section 78(5) of the Act, has been settled by the catena of judgments of the Hon''ble Supreme Court and has been reiterated by the Full Bench of this Court in a recent case decided upon a reference in the case of Assistant Commercial Taxes Officer Vs. Indian Oil Corporation Ltd. , in which the Full Bench, headed by Hon''ble the Acting Chief Justice, held as under:-

"34. The suspicion or doubt on the documents to be false or forged, per se, does not attract levy of penalty under sub-section (5) of Section 78 of the RST Act, 1994. In such case, an opportunity is to be given under Rule 55(1) of the RST Rules, 1995, to a person, to produce the required documents and/or declaration forms completed in all respects, when the goods enters or leaves the nearest check-post of the State. It is only when a person despite giving such an opportunity, is not able to produce the document and/or declaration forms completed in all respects, when the goods enters or leaves the nearest check-post of the State, or the documents are found to be false or forged, after enquiry, that a penalty may be imposed, which is a civil liability for compliance of the provisions of Act for the purposes of checking the evasion of tax. It is thus not correct to submit that penalty for submission of false or forged document or declaration, necessarily involves adjudication, for which mens rea is relevant, and is a necessary ingredient. Any doubts in this regard have been clarified by the Hon''ble Supreme Court in Guljag Industries v. Commercial Taxes Officer (supra), in which it has been clearly held in para 30, after quoting the provisions of Section 78, that;

"In the present case also the statute provides for a hearing. However, that hearing is only to find out whether the assessee has contravened Section 78(2) and not to find out evasion of tax which function is assigned not to the officer at the check-post but to the AO in assessment proceedings. In the circumstances, we are of the view that mens rea is not an essential element in the matter of imposition of penalty under Section 78(5)."

35. In view of the aforesaid discussion, our answers to the questions referred, are as follows:-

(i) The requirement of mens rea is not relevant for the purpose of determining the liability for penalty, in terms of Section 78(5) of the RST Act, 1994.

(ii) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of section 78, on proving violation of sub-section (2) of Section 78 of the RST Act, 1994.

(iii) The amendment of Rule 55 of the RST Rules, 1995, in pursuance to the decision of the Hon''ble Supreme Court in State of Rajasthan and Another v. M/s. D.P. Metals (supra), authorises the authority empowered, to make an enquiry of violation of Section 78(2), and not to adjudicate a to whether the mens rea was present in violation of sub-section (2) of Section 78, for imposing penalty under sub-section (5) of Section 78 of the RST Act, 1994.

(iv) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of Section 78, on proving violation of sub-section (2) of Section 78 of the RST Act, 1994."

36. With the decision on the aforesaid referred questions, let the S.B. Sales Tax Revision No. 92/1999, and other connected Sales Tax Revisions, be sent back and be listed before the Bench having jurisdiction to decide the matters, in accordance with the opinion given by us and the answers provided above on such opinion."

5. A coordinate bench of this Court framed the lowing substantial question of law while admitting the present revision petition vide order dated 01.05.2008:

"Whether the observations as made by the Appellate Authorities that the goods in question were accompanied by the requisite documents are not in conformity with the record and are perverse; and the finding as reached by the Appellate Authorises that penalty could not have been imposed under Section 78(5) of the Rajasthan Sales Tax Act, 1994 is, thus, vitiated?"

6. In view of above legal position, this Court is of the opinion that concurrent findings of facts arrived at by the both the appellate authorities below that the documents were in order and nothing specific was pointed out by the assessing authority as to how these documents were not complete or lacking, therefore, the question of law framed above deserves to be answered in favour of respondent-assessee and the revision petition filed by the Revenue is devoid of any merit and deserves to be dismissed.

7. Accordingly and in view of above, the present revision petition of the petitioner Revenue is hereby dismissed. No costs. A copy of this order be sent to the concerned parties forthwith.