(2015) 05 RAJ CK 0210

In the Rajasthan High Court

Case No : Civil (VAT) Revision Petition No. 1/2012

Assistant Commercial Taxes Officer, (Flying Squad) Raniwada APPELLANT

Vs

Vidhyanand RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0210

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : V.K. Mathur, for the Appellant

Judgement

Vineet Kothari, J.—The learned Tax Board by the impugned order dated 03.06.2011 had rejected the appeal of the Revenue and upheld the deletion of penalty under Section 78(5) of the RST Act, on the ground that upon physical verification it was found that vehicle in question was carrying 525 Boxes of Mintofresh (Toffee, Confectionary) and the driver failed to produce any document relating to these goods. The competent authority during checking the container found the invoice and Bilty relating to goods, however, these goods were not found to be declared at the entry check post and transit pass was also not taken, and thus upheld the order dated 26.10.2006 of the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, setting aside such penalty. The relevant findings of the Tax Board in the order impugned is quoted herein below:--

2. Briefly stated, the facts of the case are that on 23.02.2005, a goods vehicle number HR-55/A-5020? was intercepted and checked and on enquiry it was found that the person in-charge/driver of the said vehicle carrying Sintex tanks from Kalok (Gujarat) to Jaipur (Rajasthan) at Abu, though produced relevant documents viz. ST-18A, Bilty and Invoice for Sintex tanks and same were also declared at the entry post and Transit Pass was also obtained. However, at the time of physical verification, it was found that said vehicle was also carrying 525 boxes of Mintofresh (Toffee, Confectionery) and the driver was unable to produce any document relating to these goods. During checking the container, the

competent officer found the invoice and Bilty relating to said toffees, however, the same were not declared at the entry check post and Transit Pass was also not taken. Therefore, on suspicion and possibility of tax evasion, the penalty of Rs. 1,44,737/- was imposed under Section 78(5) of the Act vide order dated 10.03.2005. 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 26.10.2006 setting aside the penalty order dated 10.03.2005. The second appeal preferred by the petitioner Revenue also came to be dismissed by the learned Tax Board vide order dated 03.06.2011.

3. The petitioner-Revenue has filed the present revision petition 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. In view of above legal position, the matter deserves to be remanded back to the learned Assessing Authority, setting aside all the impugned orders passed by the three authorities below and the assessing authority will now pass fresh orders in accordance with law after providing an opportunity of hearing to the respondent-Assessee in terms of aforesaid judgment and other relevant judgments. Ordered accordingly.

6. With these observations and directions, the revision petition filed by the Revenue is disposed of accordingly. No costs. A Copy of this order be sent to the concerned parties forthwith.