(2014) 01 RAJ CK 0148

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 253 of 2008

Assistant Commercial Taxes Officer, Ward II — APPELLANT

Vs

Hemant Plastic Udyog — RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 68 VST 481

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Tanvi Sahay, Advocate for the Appellant; Sarvesh Jain, Advocate for the Respondent

Judgement

Alok Sharma, J.—This petition has been filed against the order dated October 7, 2005, passed by the Rajasthan Tax Board, Ajmer, upholding the order dated August 13, 2004, passed by the Deputy Commissioner (Appeals)-I, Commercial Taxes, Jaipur, overturning the order dated March 26, 2001, passed by the assessing authority finding the respondent-assessee in breach of section 78(2) of the Rajasthan Sales Tax Act, 1994 (hereinafter "the Act of 1994") as also rule 53 of the Rajasthan Sales Tax Rules, 1995 (hereinafter "the Rules of 1995") read with Notification No. 1174: F. 4(1) FD/Tax Div./2000-298 dated March 30, 2000 and visiting the respondent-assessee with a penalty of Rs. 15,546 u/s 78(5) of the Act of 1994. The facts of the case are that on March 22, 2001, vehicle No. RJ-14/G8620 was intercepted and checked by the Commercial Taxes Department at the Chief Post, Shahjahanpur in District Alwar in the State of Rajasthan. The vehicle was found loaded with household goods as also plastic sheets consigned to the respondent-assessee. On being asked, the driver of the vehicle produced documents accompanying the goods in transit for inspection. The documents included challan No. 990-991 dated March 21, 2001 of M/s. Happy Freight Carrier, Jaipur, as also bills and bilties mentioned therein. Bilty No. 2039 and enclosed bill No. 441 dated March 21, 2001 indicated that PVC sheets were consigned and were being transported to the respondent-assessee, M/s. Hemant

Plastic Udyog. Finding that in spite of the PVC sheets being notified goods under rule 53(1)(a) of the Rules of 1995 and yet were not accompanied by the requisite statutory declaration form ST-18A and a prima facie violation of the provisions of section 78(2) of the Act of 1994 being made out, the assessing authority issued a show-cause notice to the respondent-assessee. On receipt of the notice, the respondent-assessee admitted to the breach of the provisions of section 78(2) of the Act of 1994 read with rule 53 of the Act of 1995 as the goods-in-transit not being accompanied by form ST-18A. The order of the assessing authority indicates that the respondent-assessee having admitted to the breach aforesaid offered to pay the penalty leviable. The assessing authority therefore proceeded to levy penalty at 30 per cent of the value of the goods in transit on the assessee, i.e., Rs. 51,819. The respondent-assessee was therefore required to pay a penalty of Rs. 15,546.

2. Aggrieved by the order dated March 26, 2001, the respondent-assessee filed an appeal u/s 84 of the Act of 1994 before the Deputy Commissioner (Appeals). Vide order dated August 13, 2004, the Deputy Commissioner (Appeals) set aside the order of penalty dated March 26, 2001 primarily on the ground that prior to March 22, 2002 penalty could only be visited upon the person in charge of the goods at the time of the transit. According to the Deputy Commissioner (Appeals) as the respondent-assessee was not the person in charge of the goods at the time of transit and at the time of checking by the assessing officer, the penalty u/s 78(5) of the Act of 1994 had wrongly been levied on it by the assessing authority. The order dated March 26, 2001, passed by the assessing authority was therefore set aside. Aggrieved the Revenue Department approached the Rajasthan Tax Board against the appellate order dated August 13, 2004. The Tax Board however dismissed the Revenue''s second appeal and upheld the order of the Deputy Commissioner (Appeals) setting aside the penalty u/s 78(5) of the Act of 1994 on the respondent-assessee primarily on the ground that prior to March 22, 2002 even if there was breach of section 78(2) of the Act of 1994, no penalty could be visited upon the owner of the goods in transit and had to be confined to the person in charge to the goods in transit. Hence this revision petition.

3. From the facts on record, the following questions of law arise for consideration of this court:

(i) Whether, penalty in the facts of the present matter could not have been imposed on the owner of the goods merely for the reason that section 78(5) was amended for certain purposes on March 22, 2002?

(ii) Whether the mere fact that the respondent-assessee imported the notified goods on consignment for sale without the declaration form ST-18A was not sufficient to draw a presumption against the respondent that he had a guilty intention and was sufficient for levying of penalty u/s 78(5)?

4. Ms. Tanvi Sahay, appearing for the petitioner-Department, submits that very

premise of the orders of the Deputy Commissioner (Appeals) and Tax Board holding that prior to March 22, 2002 penalty u/s 78(2) of the Act of 1994 could not be visited upon the owner of the goods in transit but only on the person in charge of the goods in transit has already been negated by the honourable Supreme Court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., . She submits that the honourable Supreme Court in the aforesaid case has held that even prior to the amendment of section 78(5) of the Act of 1995 on March 22, 2002, penalty for goods in transit found noncompliant with section 78(2) of the Act of 1994 and rule 53 of the Rules of 1995 could be visited upon the owner of the goods in view of the fact that notification dated March 22, 2002 was a clarificatory notification and was thus operative retrospectively. It is submitted that further the honourable Supreme Court in the case of Guljag Industries Vs. Commercial Taxes Officer, , has held that where the goods in transit are not accompanied by the requisite statutory declaration, mens rea, is not required to be proved and on mere breach of obligation u/s 78(2) of the Act of 1994 and rule 53 of the Rules of 1995 where goods in transit are not accompanied by requisite statutory declaration, the assessee is liable to be visited with penalty u/s 78(5) of the Act of 1994. In this view of the matter the order dated August 13, 2004, passed by the Deputy Commissioner (Appeals) as also the order dated October 7, 2005, passed by the Tax Board are liable to be quashed and set aside and the order of the assessing authority passed on March 26, 2001 is liable to be restored, submitted counsel.

5. Per contra, Mr. Sarvesh Jain, appearing for the respondent-assessee, would submit that the orders passed by the Deputy Commissioner (Appeals) and the Tax Board are liable to be upheld in spite of the judgment of the honourable Supreme Court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., . The reason advocated is that in fact the goods in transit were not notified goods under rule 53 of the Rules of 1995 and therefore were not required to be accompanied by a declaration in form ST-18A. Counsel submits that entry 39 in the notification dated March 30, 2000 issued, inter alia, under rule 53(1)(a) of the Rules of 1995 excludes from its ambit plastic goods which are used as raw material for production of plastic goods. He submits that the goods in transit in the present case were PVC sheets which were to be used in the production of plastic goods. The sequitur of the counsel''s argument therefore is that consequently the penalty levied upon the respondent-assessee was misdirected and without statutory foundation. He submits that issue of PVC sheets imported by the respondent-assessee in the State of Rajasthan being exempted from the requirement of accompaniment by a requisite statutory declaration form during transit was set up before the Deputy Commissioner (Appeals) as also the Tax Board, but was not considered as the assessee''s appeal was allowed merely on holding that amendment to section 78(5) of the Act of 1994 brought about on March 22, 2002, including therein owner of the goods, was prospective and not retrospective.

6. Heard the counsel for the parties and perused the impugned orders as also the

notification dated March 30, 2000 issued, inter alia, under rule 53(1)(a) of the Rules of 1995.

7. In my considered opinion, the judgment of the Deputy Commissioner (Appeals) as also Tax Board passed on August 13, 2004 and October 7, 2005, respectively founded upon the amendment to section 78(5) of the Act of 1994 effective March 22, 2002, being prospective in nature are liable to be quashed and set aside in view of the fact that the honourable Supreme Court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., has held that the amendment to section 78(5) of the Act of 1994 brought about on March 22, 2002 was merely clarificatory in nature and therefore retrospective. The obtaining legal position thus is that even at the time of goods in transit and the checking thereof on March 22, 2001, the owner of the goods aside of the person in charge of the goods was liable for penalty u/s 78(5) of the Act of 1994 in the event of any contravention of the mandate of section 78(2) of the Act of 1994, rule 53(1)(a) of the Rules of 1995 and notification issued therein being found.

8. As far as the argument of the counsel for the respondent-assessee that PVC sheets, the goods in transit were not covered under the notification dated March 30, 2000, I am of the considered view that the said argument deserves only to be noticed to be rejected on more than one ground. For one, the argument appears to be have been developed only at the stage of the appeal before the Deputy Commissioner (Appeals) and before the Tax Board overlooking the admission of statutory contravention by the respondent-assessee before the assessing authority and even expressing readiness to pay the penalty leviable for reason of the goods in transit being not accompanied by the requisite statutory declaration form ST18A. Further in my considered opinion, even otherwise entry 39 in the notification dated March 30, 2000 does not exclude plastic goods used as raw material for production of plastic goods or otherwise, but only PVC granules when used as raw material for production of plastic goods. It would be in oddity if plastic goods used as raw material for production of further the plastic goods would be excluded. Entry 39 of the notification dated March 30, 2000 reads as under:

39. Plastic goods, PVC granules except when used as raw material for production of plastic goods.

9. Entry 39 aforesaid carries a coma after the words "plastic goods", is then followed by the words "PVC granules". The subsequent words in the entry 39 "except when used as raw material for production of plastic goods" immediately following the words PVC granules would in my considered opinion only relate to PVC granules used as raw material for production of plastic goods. To my mind, the "rule of last antecedent" applies to the interpretation of entry 39 of notification dated March 30, 2000. Admittedly the goods in transit were not PVC granules and were PVC sheets which are in the nature of plastic goods. Consequently, there is no merit in the contention of the counsel for the respondent-assessee that the PVC sheets admittedly made of plastic were to be

excluded for the reason of the said goods being used as raw material for the production of plastic goods by the respondent-assessee. In the case of Guljag Industries Vs. Commercial Taxes Officer, , the honourable Supreme Court has held that where the goods in transit are not accompanied by the requisite statutory declaration form, penalty is to be visited upon the assessee. In the instant case, not only the goods in transit, i.e., PVC sheets were not accompanied by the requisite statutory declaration, but also in spite of show-cause notice no attempt was made to file the requisite declaration by the respondent-assessee. Contrarily as earlier indicated it was conceded and admitted before the assessing authority that the respondent-assessee was in breach of section 78(2) of the Act of 1994, rule 53 of the Rules of 1995 as also notification dated March 30, 2000 and was willing to pay the penalty.

10. In view of the overall facts of the case, I would consequently allow this revision petition, set aside the order dated August 13, 2004, passed by the Deputy Commissioner (Appeals) as also the order dated October 7, 2005, passed by the Tax Board and restore the order of penalty dated March 26, 2001, passed by the assessing authority. The revision petition is accordingly allowed.

