(2015) 05 RAJ CK 0211

In the Rajasthan High Court

Case No : Civil (ST) Revision Petition No. 164/2013

Assistant Commercial Taxes Officer, Ward-II, Circle D — APPELLANT

Vs

Mohan Ram — RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0211

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 14.01.2013 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. steel structure, on the ground that the requisite documents, except Bilty No. 1268, were not accompanying the goods in transit, and thus upheld the order dated 07.02.2006 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:--

78. Establishment of check-post and inspection of goods while in movement-

(1) .....

(2) The driver or the person incharge of a vehicle or carrier or of goods in movement shall-

(a) carry with him a goods vehicle record including "challans" and "bilties", bills of sale or despatch memos and prescribed declaration forms;

(b) stop the vehicle or carrier at every check post, and while entering and leaving the limits of the State, bring and stop the vehicle at the nearest check post, set-up under Sub-section (1);

(c) produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check post;

(d) give all the information in his possession relating to the goods; and

(e) allow the inspection of the goods by the Incharge of the check post or any other person authorized by such Incharge.

(3) ....

(4) ...

(5) The Incharge of the check-post or the officer empowered under sub-section (3), after having given the owner of the goods or a person authorised in writing by such owner or the person Incharge of the goods, a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or declaration, a penalty equal to thirty percent of the value of such goods.

(6) ...

(7) ...

(8) Whether the driver or the person Incharge of the vehicle or the carrier is found guilty for violation of the provisions of Sub-section (2), subject to the provisions of sub-section (10), the Incharge of the check-post or the officer empowered under sub-section (3) may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person Incharge of the vehicle or the carrier, may impose a penalty on him as provided in sub-section (5).

2. Briefly stated, the facts of the case are that on 16.02.2005, a goods vehicle number RJ-19-G-2821 was intercepted and checked by the petitioner authority and it was found the vehicle was carrying steel structure, however, the requisite documents, except Bilty No. 1268, were not accompanying the goods in transit, and thus finding violation of Section 78(2)(a) of the RST Act, penalty of Rs. 2,10,000/- was imposed on assessee vide order dated 21.02.2005. 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 14.01.2013 setting aside the penalty order dated 21.02.2005. The second appeal preferred by the petitioner Revenue also came to be dismissed by the learned Tax Board vide order dated 14.01.2013.

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.