(2015) 05 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision Petition No. 360/2011

Assistant Commercial Taxs Officer, Flying Squad — APPELLANT

Vs

Bhagwati Contractors — RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0001

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 14.05.2002 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. PVC pipes, on the ground that RST/CST numbers were not mentioned in the Bill and Bilty etc. while the goods was in transit, and thus upheld the order dated 13.07.1998 of the Deputy Commissioner (Appeals-II), Jaipur, setting aside such penalty. The relevant findings of the Tax Board in the order impugned is quoted herein below:--

"I have carefully considered the arguments of learned D.G.A. and the written submissions filed by the respondent. I have also looked into the facts of the case. I do not find any case against the order passed under appeal. The goods were found with all the documents and RST/CST registration numbers were also furnished to the AA even before the passing of the penalty order and therefore without looking into the facts, the AA should have refrained from levying penalty which has been rightly set aside by the learned D.C. (Appeals).

In result, the appeal is dis-allowed.

Order pronounced.

Sd/- (S.N. THANVI) MEMBER"

2. Briefly stated, the facts of the case are that on 09.09.1996, a goods vehicle number PCK-1524 was intercepted and checked and on enquiry it was found that the RST/CST numbers were not mentioned in the Bill and Bilty etc. while the goods was in transit, and thus the penalty was imposed under Section 76 of the Act vide order dated 12.09.1996. 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 13.07.1998, setting aside the penalty order dated 12.09.1996. The second appeal preferred by the petitioner Revenue also came to be dismissed by the learned Tax Board vide order dated 14.05.2002.

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, 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.

6. 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.

