(2015) 10 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision No. 158/2814

Assistant Commissioner (AE), Abu Road — APPELLANT

Vs

National Engineering Industries Ltd. — RESPONDENT

Date of Decision : 26-10-2015

Acts Referred:

Citation : (2015) 10 RAJ CK 0073

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : D.K. Godara for V.K. Mathur, for the Appellant; Anjay Kothari, for the Respondent

Judgement

Vijay Bishnoi, J.—This civil (sales tax) revision petition under Section 86 of the Rajasthan Sales Tax Act, 1994 has been filed against the judgment and order dated 22.11.2013 passed by the Rajasthan Tax Board, Ajmer. The appellant has challenged the order dated 26.03.2010 passed by the Deputy Commissioner (Appeals) Second, Sales Tax, Jaipur before the Rajasthan Tax Board, Ajmer. However, the appeal has been dismissed by the impugned judgment and order. Hence, the appellant has filed this civil (sales tax) revision petition before this Court.

2. Learned counsel appearing for both the parties have submitted that the controversy involved in the present case is squarely covered by the decisions rendered by a Coordinate Bench of this Court in S.B. Sales Tax Revision Petition No. 266/2005 (CTO, Dungarpur Vs. M/s. Hindustan Petroleum Corporation Ltd.) and S.B. Civil (ST) Revision Petition No. 57/2008 (Assistant Commercial Tax Officer, Ward-II, Circle-D, Jodhpur Vs. M/s. Nahar Granite P. Ltd., Jodhpur) and as per the law laid down in the above mentioned orders, the matter is required to be remanded back to the learned Assessing Authority for fresh adjudication after providing opportunity of hearing to the parties concerned.

3. Heard learned counsel for the parties and considered the material available on

record and the orders passed by a Coordinate Bench of this Court in the above referred cases.

4. The Coordinate Bench of this Court in S.B. Civil (ST) Revision Petition No. 57/2008 (Assistant Commercial Tax Officer, Ward-II, Circle-D, Jodhpur Vs. M/s. Nahar Granite P. Ltd., Jodhpur) while taking into consideration the provisions of Sub-section (5) of Section 78 of the Rajasthan Sales Tax Act, 1994 has held as under:-

"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 ACTO Vs. Indian Oil Corporation Ltd. (S.T.R. No. 92/1999 along connection revisions, decided on 26.02.2015) reported in , 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."

5. Taking into consideration the law laid down by the Coordinate Bench of this Court in the above referred cases and in view of the joint submissions made by learned counsel for both the parties, this civil (sales tax) revision petition is allowed. The impugned orders passed by three authorities i.e. the Rajasthan Tax Board, Ajmer, the Deputy Commissioner (Appeals) Second, Sales Tax, Jaipur and the Assessing Authority are set aside and the matter is remanded back to the Assessing Authority for deciding the case afresh after providing an opportunity of hearing to the respondent-assessee in terms of the orders referred herein above and other relevant orders.

6. No order as to cost.