
(2011) 03 RAJ CK 0100
In the Rajasthan High Court
Case No : Sales Tax Revision No. 214 of 2008

Commercial Taxes Officer

APPELLANT

Vs

J.L.C. Electroment (Pvt.) Ltd.

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78, 78(2), 78(5)
Rajasthan Sales Tax Rules, 1995 — Rule 53

Citation : (2011) 43 VST 73

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition has been filed by the Revenue against the order of learned Tax Board dated 29.11.2005 dismissing its appeal against the order of Deputy Commissioner (Appeals) dated 26.10.2004.

2. Both the appellate authorities thus in favour of Respondent-Assessee held that penalty of Rs. 56,790/- could not be imposed on the Respondent-Assessee u/s 78 (5) of the RST Act, 1994 on account of declaration in Form No. ST-18A as per Rule 53 of the RST Rules, 1995 being found to be incomplete with respect to two commodities, namely, electrical control panel and V-Belts, and said declaration being not available in respect of third commodity, electrical motors imported by the Respondent-Assessee from the supplier of Ghaziabad, within the State of U.P.; which were checked on 04.10.2000 while being transported in vehicle No. HR38/D/4742 at Border Check Post- Shahjanhapur.

3. Learned Counsel for the Revenue, Mr. Achintya Kaushik appearing for Mr. R.B. Mathur, relying upon the decision of Hon'ble Supreme Court in the case of Guljag Industries Vs. Commercial Taxes Officer, and State of Rajasthan and Another Vs. M/s D.P. Metals, submitted that learned Tax Board has erred in setting aside the penalty imposed on the Respondent Assessee u/s 78 (5) of the Act because the goods in question which were electrical goods covered by the relevant

notification No. S. No. F.4 (1) FD/Tax Div/2000-297 dated 30.03.2000 (SO No. 374); and therefore, since ST-18A declaration was not either accompanying the said goods, or were found to be blank forms, therefore, the penalty was bound to be imposed on the Respondent-Assessee in view of the above decisions of the Apex Court. Therefore, the present revision petition of Revenue deserves to be allowed.

4. Per contra, Mr. T.C. Jain, learned Counsel for the Respondent-Assessee made following contentions:

(i) That the commodities in question, namely, electrical motor, electrical control panel and V-belts did not fall within the ambit of Entry No. 8 of the aforesaid notification providing for requirement to furnish such declaration in Form No. ST-18A besides the sale bills and goods transportation receipt as per Section 78 (2) of the Act as they were not electrical goods but the same were goods used for distribution of electricity or any other form of power and, thus, as per exception Clause of Rule 53, reproduce herein below, such declaration form in ST-18A was not even required to be furnished or accompanied with the said goods checked and found in transit on 14.10.2000 as per Section 78 of the Act; and therefore, there was no question of imposition of any penalty for any deficiency or absence of the said declaration. He also submitted that other relevant prescribed documents, admittedly, accompanied the said goods, namely, Sale Invoice and Goods Transportation Receipt and, therefore, the requirement of Section 78 (2) (a) were satisfied in the present case.

(ii) In the alternative, he contended that declaration in form ST-18A with respect to two of the commodities, which was found to be incomplete was on account of the fault of the supplier/transporter, and since these particulars were/are required to be filled-up by such supplier/transporter only, therefore, any deficiency in such declaration form in filling-up that declaration, the present Assessee, purchaser or consignee of the goods, cannot be saddled with the penalty.

(iii) He also submitted that in pursuance of the show cause notice issued by the Assessing Authority with respect to third commodity, namely, electrical motors, without prejudice to the contention of the Assessee that such declaration form was not required, Assessee furnished such duly filled-up declaration in Form No. ST-18A along-with the reply filed by the Assessee on 18.10.2000 itself; and said declaration or the other relevant documents were neither found to be false or forged upon the enquiry made by the Assessing Authority and consequently, no such penalty could be imposed on the Assessee. He relied upon the following decisions in support of his submissions.

1. *Electro Enterprises v. Commissioner of Sales Tax, Maharashtra State, Bombay* reported in (1995) 91 STC 116 (Bom)

2. *Assistant Commercial Taxes Officer, Flying Squad, Jodhpur v. Derby Textiles Pvt. Ltd.* reported in (2010) 27 VST 363 (Raj.)

3. CTO, AE, Udaipur v. Viral Filaments Ltd., Jaipur reported in (2010) 13 VAT Reporter 163 (Raj.).

5. Learned Counsel for the Respondent-Assessee also urged that these three goods are not electrical goods falling in Item No. 8 of the relevant notification dated 30.03.2000, and this being the question of law deserves to be determined by this Court in the present revision petition, since the learned Assessing Authority despite noticing this contention of the Assessee that there was no requirement of furnishing the said declaration in Form ST-18A, failed to decide this question; and the said question of law deserves to be decided by this Court. He also drew the attention of the Court towards Entries No. 96 and 111 of the rate of tax Notification dated 30.03.2000 imposing 8% and 12% rate of tax on the electrical goods, which entries are quoted herein below, to contend that items imported by the Assessee do not fall under any of the items so specified which are sought to be taxed as electrical goods under the RST Act, 1994.

96. Electrical goods excluding electrical fans, desert and room coolers, wires and cables, bulbs and tube-lights, electrical home appliances with their parts and accessories.

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111. (a) All kinds of electrical goods including electrical fans, desert and room coolers, bulbs and tube lights, wires and cables, electrical home and other appliances, electric earthenware, electrical porcelain ware, insulators and parts and accessories thereof.

(b) Electrically operated anti-mosquito devices and repellents used therein room fresheners including those operated electrically or with manual sprayers.

(c) Electronic home appliances including parts and accessories thereof. ... 12%;

6. I have heard learned Counsel for the parties at length and perused the relevant statutes and judgments cited at bar.

7. The Rule 53 as it stood at the relevant point of time vide the notification dated 26.03.1999, relevant portion is quoted below for ready reference:

53. Declaration required to be carried with the goods in movement for import within State. (1) (a) A registered dealer:

(i) who imports any taxable goods as may be notified by the State Government, for sale, except when the goods are the goods of the class or classes specified in the certificate of registration under the Central Sales Tax Act, 1956, of the registered dealer purchasing the goods for sale or in mining or in generation or distribution of electricity or any other form of power;

or (ii) x x x x x

8. The requirement of furnishing ST-18A form as per the said Rule emanates from the said Rule 53. The Rule 53 admittedly makes an exception with respect

to goods used in generation or distribution of electricity or any other form of power. Item 8 of the notification dated 30.03.2000 specifying the goods, the import of which is required to be supported by declaration in the form ST-18A , the relevant entry reads like this:

8. All types of electrical goods including UPS and CVTS.

9. The word "electrical goods" is not defined in the RST Act or in the RST Rules, or in these relevant notifications separately, therefore, the common parlance test or trade parlance test has to be applied in these circumstances. While on the one hand, Rule 53 exempts the dealer importing goods used in generation or distribution of the electricity from the requirement of furnishing ST- 18A, on the other hand the State Government in its delegated legislation or the subordinate legislation in the form of Notification dated 30.03.2000 issued under Rule 53 specifies all types of electrical goods including UPS and CVT(s) provides for requirement of producing declaration in form ST-18A. A useful reference can be made here to the above quoted Entries No. 96 and 111 of the rate notification of the contemporary period dated 30.03.2000 providing rates of tax on electrical goods, which includes electrical fans, desert and room coolers, bulbs and tube lights, wires and cables, electrical home and other appliances, electric earthenware, electrical porcelain ware, insulators and parts and accessories thereof. These commodities which are sought to be taxed by the State Government at 8% or 12% respectively under the entries No. 96 and 111 are more in the nature of the domestic electrical appliances rather than industrial electrical goods or appliances like the three items imported by the Respondent-Assessee-dealer in the present case. The purpose of ST-18A is only to regulate the import of taxable goods within the State and recording the entry thereof in the State so that their sales within the State when made, may not remain unaccounted for and evasion of tax may not be made later on. These checks and balances provided by Rule 53 and ST-18A are to prevent such tax evasion only and at the time of checking of good at entry check post, no taxable event under sale tax law as such has taken place. This, requirement of furnishing of ST-18A can be related to taxable electrical goods as defined in above quoted Entry Nos. 96 and 111 only and not other electrical goods like the ones imported by the Assessee in the present case. Admittedly, electrical motors, control panels and V-Belts do not fall under tax Entries No. 96 and 111 of the rate notification dated 30.03.2000.

10. The electrical motors, which are used for converting electrical power into mechanical power, which are run with the help of V-belts, connecting electrical motor and the relevant plant and machinery are, in the opinion of this Court, are the electrical goods, which are used for distribution of power, if not for generation of power itself. In trade parlance, electrical motors do not generate powers by themselves but are rather run with the electrical power, which is supplied to it, either from the main source provided by the electricity manufacturing companies or by the diesel generator sets and such power is transmitted or distributed or

carried to other plant and machinery used by the industrial units for production activity. The electrical motors can also be used for domestic purpose like pumping of water from underground water tank to over-head water tank but the main function of the electrical motor remains distribution of power, therefore, even if they can be said to be electrical goods, in the opinion of this Court, these commodities like electrical motors would fall within the ambit of exception clause of Rule 53, namely, goods used for generation or distribution of electricity or any other form of power rather than within the narrower compass of item No. 8 of the notification dated 30.03.2000 issued under Rule 53 providing for requirement of furnishing of declaration in form ST-18A. The electrical goods which are sought to be taxed as per entries No. 96 and 111 as quoted above appear to be electrical domestic appliances rather than the aforesaid three types of goods imported by the Respondent-Assessee dealer.

11. Therefore, firstly on the ground that no requirement of furnishing declaration in form ST-18A could be fastened upon the Respondent-Assessee in the present case, the penalty in question u/s 78 (5) of the Act deserves to be set aside and the appellate authority below has rightly done so, and therefore, their orders would not require any interference by this Court. Secondly, on the factual matrix also, this Court is satisfied that no penalty could be imposed on the Respondent-Assessee for the alleged breach of the Rule 53 even if one were to conclude that such a requirement was there in law for the Assessee to furnish these declarations. In D.P. Metal's case (supra), the Hon'ble Apex Court in para 30 delineated the need of providing opportunity to the Assessee in such cases in compliance with the principles of natural justice, where declarations were found to be deficient or absent. It is true that in subsequent judgment in the case of Assistant Commercial Taxes Officer v. Bajaj Electricals Limited reported in (2008) 17 VST 436 (SC), where the declarations in Form No. ST-18A were found to be blank, it was held that it amounted to a breach of provision of Sections 78 (2) of the Act attracting the penalty u/s 78 (5) of the Act nonetheless, the requirement of giving such opportunity to the Assessee as held in the D.P. Metals' case (supra) has not been done away with in the subsequent judgment in the case of Bajaj Electricals (supra) and Guljag Industries' case (supra).

12. In the present case, the Respondent-Assessee not only furnished the declaration form No. ST-18A duly filled-up with respect to electrical motors but also offered to fill-up the particulars in another form ST-18A with respect to other two items, namely, electrical control panel and v-belts with the help of other supporting documents already existing and found with the vehicle, namely, sale bill and goods transportation receipt, which was a simply clerical thing to do but even that opportunity was denied to the Assessee by the learned Assessing Authority. Therefore, it appear to this Court that the Assessing Authority brushing aside both the contentions of the Assessee viz. (i) there was no requirement in law to furnish ST18A; and (ii) defect and deficiency in such Form ST-18A could be removed and other declaration duly filled-up, was furnished immediately upon opportunity being given since the original form duly and fully

filled-up was not sent with the consignment by the supplier, the learned Assessing Authority, in a rather hasty and mechanical way, imposed the said penalty in question.

13. The appellate authorities, therefore, rightly set aside the penalty imposed upon the Assessee by their concurrent decisions, viz. the first appellate authority on the appeal preferred by the Assessee and the Tax Board in second appeal in the appeal preferred by the revenue. Therefore, on both these counts, the requirement of law being not there in the first instance, and on the second count even if such requirement is presumed on factual matrix also, this Court is satisfied that the penalty in question has rightly been set aside by the appellate forums and same do not require any interference by this Court in revisional jurisdiction.

14. Consequently, this revision petition filed by the Revenue being bereft of merit fails and the same is hereby dismissed accordingly. No costs.