
(1977) 11 RAJ CK 0003

In the Rajasthan High Court

Case No : Sales Tax Reference No. 142 of 1973

Commercial Taxes Officer

APPELLANT

Vs

Oswal Brothers and Another

RESPONDENT

Date of Decision : 03-11-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 15

Citation : (1977) WLN 403

Hon'ble Judges : V.P. Tyagi, C.J.; R.L. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.L. Gupta, J.—The assessee, non-petitioner No. 1 M/s Oswal Bros, purchased last point goods i.e. ground nut worth Rs. 3,55,619.59 p. in the assessment year 1966-67 (starting from 31-3-66 to 17-4-67) against declaration form ST 17 with a declared purpose of selling the goods within the State of Rajasthan. Similarly, the assessee purchased last point goods i.e. ground nut etc. worth about Rs. 1,00,000 00 in the assessment year 1967-68 (starting from 18-4-67 to 6-4-68) against the declaration in form ST 17 with a declared purpose of selling the goods within the State. The assessee sold these goods in both the assessment years out side the State. The Commercial Taxes Officer, Special Circle. Jodhpur, found in both the cases that the assessee has contravened the conditions of declaration. He further held that the assessee failed, without reasonable cause, to make use of the goods of the declared purpose. He did not agree with the explanation give n by the assessee. He, therefore, imposed a penalty of Rs. 600/- for the assessment year 1966-67 and that of Rs. 300/- for the assessment year 1967 68 u/s 16(1)(k) of the Rajasthan Sales Tax Act, hereinafter called the R.S.T. Act, vide his order dated 18-1-69. Aggrieved by these orders the assessee went in appeal before the Deputy Commissioner Commercial Taxes "Appeals) Bikaner, who, by his order dated 27 4-1970, set aside the penalty of Rs. 600/- imposed for the year 1966-67 and that of Rs. 300/- imposed for the year

1967-68. Aggrieved by this order of the Deputy Commissioner Commercial Taxes (Appeals) Bikaner, dated 27-4-1970. the Commercial Taxes Officer. Special Circle, Jodhpur went in revision before the Board of Revenue for Rajasthan, Ajmer. The Board of Revenue held that though the assessee's declared purpose was to sell the goods purchased by him within the State of Rajasthan and by selling some of goods outside the State of Rajasthan the assessee has committed the breach of his declaration made in form ST 17. The Board, how ever, held vide its order dated 29-1-1975 that the assessee has shown reasonable cause for the failure to abide in his declaration in the instant case. The guilty intention of. The assessee is not obvious in the circumstances of the present case. The Board, therefore, upheld the order of the Deputy Commissioner (Appeals), Bikaner.

2. The Commercial Taxes Officer, Special Circle, Jodhpur, filed a reference application u/s 15(1) of the R.S.T. Act on 21-10-1975 before the Board of Revenue suggesting that the following questions of law arise out of the order of the Board and they be referred to this Court:

1. Whether on the facts and circumstances of the case the Board of Revenue was justified in confirming the order of the Dy. Commissioner (Appeals), Bikaner, who set aside the penalty imposed by the applicant u/s 16(1)(k) of the Rajasthan Sales Tax Act.

2. Whether on the facts and circumstances of the case the D.B. of the Board of Revenue was justified in rejecting the plea taken in revision that the non-applicant assessee's declared purpose was to sell goods within the State purchased by him on the strength of S.T. 17 under Rule 25C of the R.S.T. Rules.

3. Whether on the facts and circumstances of the case the nor-applicants committed a breach of the condition mentioned in S.T. 17 by selling the goods in S.O.S. and has thus misused declaration ST-17.

4. Whether on the facts and circumstances of the case it was non-applicant's duty to give reasonable cause at the time of assessment for making use of the goods for the purposes other than the purpose." declared by him and whether he failed to discharge this duty by not giving reasonable cause.

3. The Board having failed to dispose of the reference applications filed u/s 15(1) within d period of IPC days from the date of the applications as prescribed by Section 15(1) the petitioner therefore filed present reference applications u/s 15(3A) of the RST Act within 60 days The application filed u/s 15(3A) pertaining to the year 1966-67 has been numbered in this Court as D.B. Civil Sales Tax Reference No 141 of 1976 and the application pertaining to the assessment)ear 1967-c.S has been numbered as D.B. Civil Sales Tax Reference No. 145 of 1976 As in both these applications, the facts and circumstances are similar and the common questions are involved, we propose of dispose both these applications by this single order.

4. Mr. Bhandari, the learned Counsel for the petitioner, has contended that it

admits of no dispute that the non-petitioner No. 1 purchased last point goods in the relevant years against declaration form ST. 17 with the declared purpose of selling the goods within the State of Rajasthan he has failed to sell these goods in Rajasthan and sold them outside the State of Rajasthan. He has thus contravened the terms of his declaration made in form S.T. 17. According to Section 16(1)(k) of the R.S.T. Act if a dealer after purchasing any goods in respect of which he has made a declaration under the provisions of this Act or Rules made thereunder, fails without reasonable cause to make use of the goods for the declared purposes, he is liable to pay penalty. The only explanation which non-petitioner No. 1 has given for committing the breach of his declaration is that it is not possible for dealer to predict at the time of purchase as to how and where the goods will be sold. According to Mr. Bhandari this explanation was no explanation at all and in no case this explanation can be said to be a Seasonable cause for committing the breach of the declaration by the non-petitioner No. 1 as to why he sold the goods outside Rajasthan. The Board of Revenue has held it to be a reasonable cause. This order of the Board therefore raised question of law which calls for reference to this Court. The apprehension of Mr. Bhandari seems to be that if such an explanation as given in the present case is accepted as reasonable cause for committing a breach of his declaration then in every case a dealer can commit the breach of his declaration with impunity. During the course of arguments Mr. Bhandari has, however, submitted that the Board of Revenue for Rajasthan, Ajmer may be directed to state the case and refer the following two questions of law for decision of this Court:

1. Whether in the facts and circumstances of the case, the finding of the Tribunal that there was reasonable cause for selling the goods outside Rajasthan by the dealer in violation of his declaration given in form ST-17 is based on no evidence and is perverse and, therefore, stands vitiated?

2. If the answer to the above question is in the affirmative, whether the Board was justified in law in deleting the penalty u/s 16(1)(k) of the RST Act on the ground that since there was reasonable cause, there was no guilty intention.

5. The contention of Mr. Bhandari is that there was no evidence on which the Board could have concluded that there was reasonable cause & that in view of the matter it is a question of law when the Tribunal based its conclusions on no evidence &, therefore, the question of law arises out of the order of the Board. He has relied on *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, *Commissioner of Income Tax West Bengal v. Radhakrishnan Nand Lal* (1975) 29 ITR 173 *Commissioner of Income Tax West Bengal II v. Rajasthan Mines Ltd.* 18 ITR (1970) 45. It has been held by the Hon'ble Supreme Court in *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, that finding on questions of pure facts arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have

come; and this is so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. It has further observed that when a conclusion has been reached on an appreciation of a number of facts established by the evidence, whether that is sound or not must be determined not by considering the weight to be attached to each single fact in isolation. But by assessing the cumulative effect of all the facts in their setting as a whole. Where an ultimate finding on an issue is an inference to be drawn from the facts found, on the application of any principle of law there is a mixed question of law and fact, and the inference from the facts found is in such a case a question of law. But where the final determination of the issue equally with the finding or ascertaining of the basic facts does not involve the application of any principle of law an inference from the facts cannot be regarded as one of law. The proposition that an inference from facts is one of law is, therefore, correct in its application to mixed questions of law and fact but not to pure questions of fact. In the case of pure questions of fact an inference from the facts is as much a question of fact as the evidence of the facts.

6. Mr. Mantri on behalf of the non-petitioner No. 1 has contended that the question whether reasonable cause has been established or not is a pure question of fact and in view of the above authority the finding; on question of pure fact arrived at by the Tribunal are not to be disturbed by a High Court in a reference. It may, however, be mentioned that Mr. Bhandari for the petitioner also concedes to this position that it is purely a question of fact. His only contention is that there was no evidence before the Board to come to the conclusion that there was reasonable cause and therefore, the finding of the Board on this question is perverse. The High Court can, therefore, disturb the findings of facts on a reference being made to it. Mr. Mantri on the other hand has contended that it cannot be said that there was no evidence. It is not the case that the assessee has not furnished any explanation at all. He has pointed out that certain circumstances have also weighed with the authorities to come to the conclusion that there was reasonable cause for not selling the goods within the State of Rajasthan and selling them outside The Deputy Commissioner (Appeals) Commercial Taxes, Bikaner and the Board of Revenue have come to this conclusion on the basis of these facts and circumstances that there was reasonable cause for the assessee to sell these goods outside the State and the penalty could not have been imposed. Whether the explanation and the circumstances were sufficient or not to hold that there existed a reasonable cause is not a matter in which this Court should go. It was to be determined by the authorities and they have determined it. It is not a case of no evidence or that the findings of the Board are perverse.

7. The question whether there was a reasonable cause is purely a question of fact. This fact has not been disputed even by Mr. Bhandari appearing for the petitioner. The finding of the Board on this question of fact is binding upon this

Court unless it is shown that it is based on no evidence or is perverse. The present is not a case where no explanation has been furnished by the assessee. The assessee has certainly furnished some explanation. On his behalf certain facts were also pointed out which weighed with the authorities to come to the conclusion that there was reasonable cause for his failure to abide by his declaration. The Deputy Commissioner in his order has observed as follows:

The learned Counsel argued that no business man can predict the quantum of sale that he is going to effect during a particular year. Decisions have to be changed due to the exigencies of the trade. He also argued that looking to the extent of total business done by the assessee these sales of goods originally purchased (or a different purpose were quite meager and so he pleaded that a penalty imposed u/s (16)(1) k) be set aside. I agree with the learned Counsel and set aside the penalty of Rs. 600/-, imposed u/s 16(1) of the R.S.T. Act for the year 1966-67 and of Rs. 300/- imposed under the same section under the RST Act for the year 1967-68.

The Board of Revenue in his impugned order has observed as follows:

The assessee has, however, shown reasonable cause for failure to abide by his declaration in the instant case. The guilty intention of the assessee is there fore, not obvious in the circumstances of the present case.

Thus we find that the present case cannot be said to be a case of no evidence. We are also unable to hold that this finding of the Board is perverse. A conclusion has been reached on an appreciation of a number of facts, each single fact is not to be considered in isolation but the cumulative effect of all the facts in their setting as a whole is to be considered. The Board has come to the conclusion on an appreciation of the facts and circumstances of the case. It is another thing that this Court may come to a conclusion entirely different from that of the Board. Even then this Court has not to disturb the finding on a question of pure fact arrived at by the Board, unless that is based on no evidence or is perverse. As pointed out above in the present case it cannot be said that the findings of the Board, that there was a reasonable cause for the assessee as to why he committed the breach of his declaration made in form ST-17, is based on no evidence or is perverse.

8. It has been observed by the Section Court in *Hindustan Steel Ltd v. State of Orissa* (1970) 25 STC 211 that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings and the penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contemptuous or dishonest or acted in conscious disregard of its obligation. Penalty will also be not imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. It cannot be said in the instant case that this discretion was not

exercised judicially The Court should, however, be slow in interfering in such exercise of discretion by the authorities concerned.

9. The apprehension of Mr. Bhandari that what the nor-petitioner No. 1 has said by way of an explanation for committing the breach of this declaration is accepted as reasonable cause for committing the breach of declaration, then in every case a dealer can commit the breach of his declaration within impunity and Section 16(1)(k) will become nugatory is not well founded. The assessee in each case has to establish the "reasonable cause" for his failing to abide by the terms of his declaration and the question whether there is a reasonable cause or not is a result of the findings of fact on this point in each case and each case has to be determined on its own merit. In the present case not only the explanation furnished by the assessee has been taken into consideration but certain other circumstances and exigencies of the trade have also been taken into consideration. Whether there is a reasonable cause or not for the breach of the terms of the declaration is a matter which has to be decided on the facts and circumstances of each case and no hard and fast rule can be laid down for determining as to what constitutes a reasonable cause in the circumstances of a particular case.

10. In the present case the Board has come to the conclusion that there was reasonable cause on the part of the assessee for his failure to make use of the goods for the declared purposes and on the basis of that finding the penalty was cancelled. In our view, it is purely a finding of fact and no question of law arises and as such we decline to direct the Board to refer the aforesaid question to us.

11. The applications for making reference have, therefore, no merit and are dismissed. The parties are left to bear their own costs.