

(2015) 05 RAJ CK 0180

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision Petition No. 42 of 2009

C.T.O., A/E, Udaipur

APPELLANT

Vs

Everest Proteins

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0180

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : V.K. Mathur and Dinesh Godara, for the Appellant; Falgun Buch, Advocates for the Respondent

Judgement

Dr. Vineet Kothari, J.—The learned Tax Board by the impugned order dated 04.06.2008 had rejected the appeal of the petitioner-Revenue and upheld the deletion of penalty under Section 78(5) of the RST Act upon checking of goods viz. groundnut oil on the ground that ST-18A Form was not accompanying the goods in transit but the same was later on produced while upholding the order dated 09.02.2005 of the Deputy Commissioner (Appeals), who accepted the appeal of the assessee and also that such penalty could not be imposed on the owner of the goods prior to 22.03.2002. The relevant findings of the Tax Board in the order impugned is quoted herein below:-

2. Briefly stated, the facts of the case are that on 29.12.1998, a goods vehicle No. MP-14C-3424 was intercepted and checked by the Revenue authority and it was found that Form ST 18A was not accompanying the goods in question and thus finding violation of Section 78(2)(a) of the RST Act, penalty of Rs. 88,006/- was imposed on Assessee vide order dated 30.12.1998. Upon a challenge being laid by the respondent-Assessee by filing appeal before the learned Deputy Commissioner (Appeals), the same was allowed vide order dated 09.02.2005 setting aside the penalty order dated 30.12.1998. The second appeal preferred by the Revenue came to be rejected by the learned Tax Board vide order dated 04.06.2008.

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 as 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. Regarding the imposition of penalty on the "owner" of the goods prior to the amendment in Section 78(5) of the RST Act with effect from 22.03.2002, a coordinate bench of this Court earlier in the case of Assistant Commercial Taxes Officers Vs. M/s. Nar Singh Traders reported in (2008) 20 Tax Up-date 62 had held that no penalty under Section 78(5) of the Act prior to amendment with effect from 22.03.2002 could be imposed on the "owner" of the goods. However, later on, the Hon"ble Supreme Court in the case of Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., (2008) 12 JT 222 : (2009) 1 SCC 308 : (2008) 18 VST 436 took a different view and held that the expression "person in charge of goods" under Section 78(5) of the Act was wider expression and included the "owner" of the goods even prior to 22.03.2002 also, however, penalty could be imposed on such owner subject to giving of opportunity of hearing to him. The relevant portion of the from the Head Note of SCC is reproduced herein below for ready reference:-

"From Section 78(5) read in its entirety with Rule 53 of the 1995 Rules, it is clear that penalty was liable to be imposed for importation of any taxable goods for sale without furnishing a declaration in Form ST 18-A completely filled in all respects. The duty to fill and furnish the said form was imposed on the purchasing dealer. Therefore, Section 78(5) as it stood prior to 22.3.2002 imposed penalty if possession or movement of goods took place, inter alia, in breach of Section 78(2)(a) on "the person in charge", which included the owner. Section 78(5) comes after Section 78(4)(c) which talks about release of the goods to "the owner of the goods" on his giving of adequate security. It is the owner (importer) who has to fill in Form ST 18-A. It is the owner who is entitled to seek release under Section 78(4) on giving security. It is the owner who is entitled to hearing under Section 78(5) and, therefore, the expression "person in charge of the goods" under Section 78(5) would include the owner. Moreover, under Section 78(2) the words used are "person in charge of a vehicle or carrier of goods in movement" whereas the words in Section 78(5) refer to "person in charge of the goods". The words "in movement" do not find place in Section

78(5) and therefore the expression "person in charge of goods" under Section 78(5) was wider than the expression "person in charge of goods in movement" under Section 78(2)(a). Consequently, the expression "person in charge of the goods" under Section 78(5) who is given an opportunity of being heard in the enquiry would include the "owner of the goods". (Para No. 28)".

6. 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.

7. 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.