

(2016) 01 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision Petition No. 1344/2003

C.T.O., Suratgarh

APPELLANT

Vs

D.K. Gwar Udyog

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(3)

Citation : (2016) 2 RLW 1351 : (2016) 3 WLC 740

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : V.K. Mathur, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—1. The present revision petition under Section 86 of the Rajasthan Sales Tax Act, 1994 is directed against the order dated 30.08.2002 passed by the learned Rajasthan Tax Board, Ajmer in Appeal No. 330/2000/SRIGANGANAGAR-Commercial Taxes Officer, Commercial Taxes, Suratgarh Vs. M/s. D.K. Gwar Udyog, Sri Bijainagar, whereby the learned Tax Board, while upholding the imposition of tax on the Assessee on the goods, which were purchased against ST-17 without payment of tax were sold by it in course of export against declaration in Form-H furnished by the purchaser, who ultimately exported the goods out of India, set aside the penalty under Section 64 of the Act. The assessee has paid the tax levied by the Assessing Authority without any protest.

2. The relevant findings of the learned Tax Board in the order dated 30.08.2002 are quoted below for ready reference:-

"6. We have carefully considered the arguments of both the learned counsel and have also perused the record. It is established on record that the learned AA, after inquiry, found that the appellants in Appeal No. 112/2000 furnished declaration ST 17 that the good purchased against the declaration were meant

for resale within the State. It is also undenying the fact established on record that the appellants sold these goods purchased against declaration ST 17 outside the State against Form "H" thereby depriving the Revenue its legitimate tax revenue accruing the last point of sale under the law. In the light of these facts, it is clear that the appellants misused the declaration ST 17 furnished by them. We now turn to the point whether purchase tax was leviable on the subject good sold against Form "H". To examine this point, two things need to be looked into (i) whether the appellants had been placed with any export order in compliance of which they supplied subject goods against Form "H", and (ii) whether tax was leviable on the last point of sale of the subject goods, though against the declaration furnished in this case, in the course of inter-State trade or commerce. It is the admitted position on record that no export order was ever placed with the appellants. This being so, they were never called upon to supply goods in compliance of any export order and, therefore, their transactions of sale were not covered by the provisions of section 5(3) of the CST Act, thereby enabling them to claim exemption of tax on the sale of these goods. As regards the second point, the position of law in this regard is very clear. Any registered dealer under Rule 23 of the RST Rules, 1995 can purchase goods for resale either within the State or in the course of inter-State trade or commerce. But since under Rule 15(2), the tax is leviable at the last point of sale of goods purchased against declaration ST 17, the dealer who goes in for purchase of taxable goods against declaration ST 17 has to pay tax at the last point of its sale either within the State or in the course of the inter-State trade or commerce, as the case may be. But in the instant case, the appellants, despite furnishing a declaration for resale of the goods purchased against declaration ST 17 within the State and also without having any export order, sold the subject good to a dealer outside the State against Form "H" and therefore, they became liable to purchase tax under the law. In this view of the matter, we do not find anything wrong in the order passed by the learned AA assessing the appellants to purchase tax along with interest on the sale of subject goods to a dealer outside the State in violation of the declaration furnished by them before.

7. As has been discussed above, the appellants have been found to be guilty for misusing the declaration ST 17 by acting contrary to it. Now, the point which remains to be considered is whether the misuse of the declaration by them was deliberate or unintentional. Although the appellants failed to substantiate their assertion that they furnished declaration that the goods purchased against it shall be sold in the course of inter-State trade or commerce, but the fact remains that they appear to have come out with clean hands before the learned AA. Not only that, even the learned AA has not brought on record any material or evidence to suggest that they acted in the manner they did with a guilty mind of evading tax. It is true that they did not submit a formal reply to the show cause notice, but, at the same time, it is also true that their stand all along has been that the goods purchased against declaration ST 17 could have been sold under the Rules in the course of inter-State trade or commerce. It is true that the

purchasing dealer registered outside the State did not furnish Form "H" to them signifying exemption of tax under the law. It is also true that earlier, under the law, levy of purchase tax in such cases was not there. In the light of all these factors, we find merit in the contention of the learned counsel that the appellants (respondents in Appeal No. 330/2000) may have remained under the bona fide belief, though wrongly, that the goods purchased against declaration ST 17 could be sold in the course of inter-State trade or commerce without suffering any tax at the last point because of the availability of Form "H". Thus, we feel that the misuse of the declaration committed by them was in good faith and, therefore, learned DC (Appeals) did not appear to have committed any error in setting aside the penalty u/s. 64 of the at which is only discretionary in nature.

8. In result, both the appeals fail and the same are hereby rejected.

9. Order pronounced.

3. Learned counsel for the petitioner-Revenue, Mr. V.K. Mathur urged that once on para 6 of the aforequoted order, the Tax Board came to the conclusion that there was misuse of declaration Form ST-17, the penalty under Section 64 of the Act of 1994 ought to have followed as a consequence and could not have been set aside by the learned Tax Board on the ground that there was no guilty animus on the part of the Assessee and sale against Form-H was in good faith on the part of the assessee.

4. On the other hand, Mr. Dinesh Mehta, learned counsel for the respondent-Assessee urged that the penalty under Section 64 of the Act of 1994 has been rightly set aside by the learned Tax Board since the transactions in question were duly disclosed in the books of accounts and Form "H" as prescribed under the Central Sales Tax Act, 1956, was validly given by the assessee. He relied upon the decision of the Hon''ble Supreme Court in the case of M/s. Onkarlal Nandlal Vs. State of Rajasthan & Anr., , AIR 1986 SC 2146 and submitted that in that judgment, the Hon''ble Supreme Court has even held that the situs of the sale remains within the State, even if the goods are sold in the inter-State trade or commerce and the goods actually moved out outside the State of Rajasthan. He submitted that similar would be the position, even if the goods are sold in the court of export against declaration Form-H prescribed under the CST Act of 1956. Therefore, the Assessee could have even claimed exemption from payment of tax in the present case, since the condition of declaration Form ST-17 that the goods purchased without payment of tax on them, the Assessee can resale the same within the State, was satisfied by the Assessee in the present case, in terms of the aforesaid judgment of the Hon''ble Supreme Court. However, he submitted that the Assessee has already paid the tax imposed by the Assessing Authority under RST Act and it has been upheld by the learned Tax Board in the impugned order dated 30.08.2002, and the Assessee has also not filed any cross-objections in the present revision petition filed by the Revenue. On such tax being paid by the Assessee, the only the limited question, which remains for consideration by this Court is the question of penalty under Section 64 of the Act of 1994. On that

ground, Mr. Dinesh Mehta, learned counsel for the Assessee urged that there was no mala fide on the part of the Assessee and the transactions in question were duly disclosed in the books of accounts of the assessee and returns filed by it and in the absence of any guilty animus or mala fides on the part of the Assessee, the learned Tax Board was justified in setting aside the penalty imposed by the Assessing Authority under Section 64 of the RST Act of 1994.

5. Having heard the learned counsels for the parties, this Court is satisfied that the present revision petition filed by the Revenue does not require the reversal of the impugned order of the learned Tax Board, insofar as the penalty under Section 64 of the Act of 1994 was set aside by it. Without going into the question of imposition of tax on the sales made in the course of export made in the present case, which is also not pressed by the learned counsel for the Assessee, since the Assessee has already paid the local RST tax imposed by the Assessing Authority and upheld by the learned Tax Board vide para 6 of the impugned order, quoted above, the case does not raise any valid ground to revive the imposition of penalty in the present revision petition filed by the Revenue. Since not only the transactions and sales were duly disclosed in the books of accounts and were supported by proper invoices and declarations prescribed under the law and the issue of imposition of tax itself on such transactions was a debatable issue and no mala fides can be attributed to the respondent-Assessee and no penalty taking a technical view of the matter, on misuse of declaration Form ST-17, could have been imposed by the Assessing Authority. The learned Tax Board was therefore, justified in setting aside the same by the impugned order dated 30.08.2002. No interference in the impugned order is therefore, called for in the present revision petition and the same is liable to be dismissed.

6. Accordingly, the present revision petition of the Revenue is dismissed. No costs. A copy of this order may be sent to the concerned parties as well as the learned Rajasthan Tax Board, Ajmer, forthwith.