(2008) 07 RAJ CK 0058

In the Rajasthan High Court

Jhoomarmal Dhanraj APPELLANT

Vs

ACTO RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 78(5)

Citation : (2009) 11 Vat Reporter 127

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this revision petition, the petitioner-dealer seeks to question the order dated 28.03.2006 as passed by the Rajasthan Tax Board, Ajmer in Appeal No. 700/2005 whereby, while setting aside the order dated 24.02.2005 as passed by the Dy. Commissioner (Appeals), Bikaner, the order dated 14.10.2003 as passed by the Assessing Authority u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (''the Act of 1994'') has been restored.

2. Briefly put, the background facts and relevant aspects of the matter are that on 11.10.2003 a truck bearing registration No. RJ 19 G 2026 coming from Nokha to Jodhpur was checked at Nagaur road by the empowered authorities under the Act of 1994 and upon demanding the documents, a bilti of M/s. Kamal Road Lines, Nokha dated 11.10.2003 and a bill issued by the petitioner-dealer bearing No. 39 dated 11.10.2003 and a letter to M/s. Shanti Pulses, Jodhpur for payment of transportation charges at Rs.1,690/- were produced. The authorities concerned found that the bilti carried the particulars of ?224 kattas and 19 bags? of ?cattle feed? whereas the particulars of the goods were stated in the bill as ? eqax nky Msest S.T.F. ?iq? vkgkj??. The authorities checked the vehicle and found it carrying damaged Moong and Urad; and observed that the goods in question were liable to tax as pulse but were wrongly sold as tax free goods in the name of ?cattle feed?. Hence, a notice u/s 78(4) (a) of the Act of 1994 was issued.

3. On 12.10.2003, the owner of dealer firm produced three purchase bills dated 24.12.2002, 28.01.2003, and 31.01.2003 wherefrom it was noticed that earlier the dealer was purchasing the goods in the name ''Moong Dal Damage'' but later on got it stated as ''Moong Dal Cattle Feed''. The authorities formed the opinion that there had been a false declaration where the goods in question were stated tax free goods; and issued notice u/s 78(5) of the Act of 1994. The dealer submitted a reply to the notice that he had dispatched ?damaged Moong Dal (Cattle Feed)? and to his impression, it were sales tax free; and prayed that the matter be decided immediately.

4. The Assessing Authority in its impugned order dated 14.10.2003 referred to the facts of the case and, while relying upon various decisions including a Division Bench decision of This Court in the case of Gotilal Bhonrilal v. C.T.O. (1986) 63 STC 78 and that of Hon?ble Bombay High Court in Kirloskar Pneumatic Co. Ltd. Vs. State of Maharashtra, held that the dealer had intentionally and with a view to evade tax shown the taxable goods as cattle feed under a false declaration and transported the goods as sales tax free. The Authority, therefore, imposed Rs.24,273/- as penalty and further ordered recovery of Rs.3,236/- towards sales tax.

5. The aforesaid order passed by the Assessing Authority was, however, reversed by the Dy. Commissioner (Appeals) on 24.02.2005 while accepting the appeal filed by the dealer with the observations that the commodity in question had been ?wastage of Moong Dal?, which is not used for human consumption and is used as cattle feed; and remains exempt from tax as such. The learned Dy. Commissioner (Appeals) also observed that the Assessing Authority had not stated any reason wherefor it were treated to be a case of the goods meant for human consumption.

6. The matter was taken in appeal by the Department to the Tax Board against the order so passed by the Dy. Commissioner (Appeals). The dealer-petitioner did not appear before the Tax Board despite notice. While deciding the appeal by the impugned order dated 28.03.2006, the learned Tax Board has not agreed with the Dy. Commissioner (Appeals) with reference to the aforesaid decisions in Gotilal Bhonrilal and Kirloskar Pneumatic Co. Ltd. and observed that the classification of goods cannot vary with the use to which the articles would be put by the purchaser. The learned Tax Board found that the dealer has made a false declaration about the goods being cattle feed; that pulse would always remain pulse and cannot be treated as cattle feed nor there was anything on record to show that the said Moong Dal was not fit for human consumption; that even if damaged, the said goods could be used for human consumption; that the goods cannot be treated as tax free for their likely use as cattle feed; and that because of transportation of such goods while stating them as cattle feed in the bilti and as Moong Dal (cattle feed) in the bill, the intention to evade tax was apparent and the penalty has rightly been imposed. The learned Tax Board has observed and held as under:

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7. Seeking to assail the order aforesaid, Learned Counsel for the petitioner strenuously contended that the consignment in question had admittedly been of damaged Moong Dal; and such damaged Moong Dal being not fit for human consumption, its natural use remains that of cattle feed and was rightly dealt with as such by the petitioner-dealer. Learned Counsel submitted that when nothing was concealed by the dealer and description of goods as damaged Moong Dal was not found incorrect, the Assessing Authority could not have levied tax and inflicted penalty merely because of his different opinion about the description of the goods. Learned Counsel further submitted that in the proceedings u/s 78 of the Act of 1994, the authority concerned could not have decided on the question of taxability or rate of tax applicable on the goods for the scope of enquiry being limited to consider if the requisite documents were not furnished or if the documents were false. According to the Learned Counsel, all the requisite documents were furnished complete in all respects and there arise no question of any falsehood in the declaration of the dealer because he had categorically declared that the goods were sold as cattle feed and no tax was charged. Learned Counsel emphasised that the Assessing Authority has gone beyond the scope of the proceedings and the Tax Board has erred in restoring the erroneous order so passed by the Assessing Authority. Learned Counsel referred to the decision of This Court in M/s. Maheshwari Minerals & Chemicals v. Assistant Commercial Taxes Officer, Udaipur S.B. Covil Sales Tax Revision Petition No. 478/2006 and connected cases, decided on 11.05.2007.

8. Learned Counsel appearing for the Department vehemently opposed with the submissions that the likely use of the commodity cannot be decisive on its liability for taxation and it is the classification of the goods that matters; that goods in question being pulse, Moong Dal, were subject to sales tax as such and merely by suggesting the consignment in question to be of damaged pulse, the dealer could not have declared it to be a cattle feed so as to evade tax. In support, Learned Counsel referred to the decision of This Court in Gotilal Bhonrilal (supra). Learned Counsel further submitted that it is very much within the domain of the authority concerned to check the correctness of the documents and in the given case, also to examine the question of taxability of goods.

Learned Counsel contended that when the documents to accompany the goods in movement are required to be complete in all respects, must tally with the goods transported, and should not be false, the particulars as stated in the documents are obviously meant for checking and scrutiny; and when the documents in question were found incorrect and false on material particulars regarding description of goods with the claim that they were sales tax free, the Assessing Authority has rightly passed the order against the dealer.

9. Learned Counsel for the petitioner rejoined with the submissions that if the contentions as urged on behalf of the Department were to be accepted, it would lead to an unacceptable result that all the exercise of regular assessment would be undertaken in the proceedings u/s 78 of the Act of 1994, something not contemplated by the statute. Learned Counsel submitted that the said provision being essentially meant to check evasion of tax during transportation, any dispute about taxability of goods, by its very nature, has to be left to be determined during regular assessment proceedings.

10. Having considered the rival submissions, This Court is clearly of opinion that this revision petition remains bereft of substance. The observations and findings of the Rajasthan Tax Board as reproduced hereinbefore remain unexceptionable; and are in accord with the law applicable to the case.

11. The main plank of the submissions on behalf of the dealer is that the goods in question being damaged pulse, named ''Moong Dal Damaged'', were purchased as cattle feed and were sold as cattle feed, therefore, there had been no false declaration in the documents in question. The submission is fundamentally incorrect. The commodity concerned had been nothing but a pulse, Moong Dal. Its quality, be it excellent, or good, or average, or bad, or damaged, in any event, would not alter its character as that of a pulse. Even if it be assumed that the goods in question had been ?damaged Moong Dal?, it does not ipso facto lead to the result that the so-called damage had changed the character of the commodity from pulse to cattle feed. It cannot be assumed that as soon as Moong Dal is damaged, it gets reduced to, or turns into, a cattle feed and cannot be used for human consumption at all.

12. In the case of Gotilal Bhonrilal (supra) This Court rejected the contention that Urad and Gram be treated as cattle feed and exempt from tax; and This Court held that the Board was right, with reference to the fact that Urad and Gram are primarily used for human consumption and it is only incidental that these commodities are also used as the constituents of cattle feed, in holding that these commodities are not cattle feed so as to entitle the dealer to claim exemption from payment of sales tax or purchase tax.

13. The entire case of the present petitioner is founded on incorrect premise where the petitioner makes assumptive submission that natural use of damaged Moong Dal is that of cattle feed. This Court is unable to find any basis for such assumption and any rationale behind such submission. The natural and primary

use of Moong Dal being for human consumption, its incidental or alternative use, say because of some qualitative change, has no bearing on its classification for the purpose of taxability; and in any case, it cannot be classified as cattle feed merely with reference to the so-called damage. Thus, the description of the goods in the bill and bilti accompanying the consignment was incorrect where a taxable commodity (Moong Dal) was described as a non-taxable one (Cattle Feed).

14. Once it was found that the goods were not correctly described in the documents that stated a taxable commodity as a non-taxable one, such documents were incorrect on the relevant facts and material particulars; and could only have been termed as false. The present one was clearly a case of submission of false documents and the goods in movement being not accompanied by true and faithful documents. The Assessing Authority has not committed any error in imposing penalty in this case.

15. The decision in M/s Maheshwari Minerals & Chemicals (supra) has no co-relation with the case at hands. Therein, the Assessing Authority held the assessee liable to pay tax on his products, which, as per the order of Assessing Authority were stone powder and chips and which, according to the assessee, were poultry feed, ?murgidana?. The Dy. Commissioner (Appeals), however, held that the assessee was not given opportunity of hearing and proceeded to remand the matter but with certain observations that if it be found that the product of the assessee is used as poultry feed either independently or by mixing in other poultry feed, then the assessee be given benefit under the relevant notification. Aggrieved with such observations, the department preferred appeal to the Tax Board; and the Tax Board proceeded to allow the appeal with the finding that the product in question was not a poultry feed. In the revision petition as preferred by the assessee, This Court did not approve of the decision of the Tax Board where, even without setting aside the finding of the Dy. Commissioner that the assessee was denied opportunity of hearing before the Assessing Authority, the order of remand as made by the Dy. Commissioner (Appeal) was interfered with and the Tax Board decided the question itself that the product in question was poultry feed or not. This Court held that entire issue should have been sent to the Assessing Authority for deciding after opportunity of hearing to both the parties; and This Court observed that opportunity of hearing having not been extended to the assessee, there was no factual foundation with the Assessing Authority and the department too had no opportunity to meet with the grounds whereupon the assessee claimed his product to be the poultry feed. This Court set aside the order passed by the Tax Board; and directed that the Assessing Authority shall decide the issue in accordance with law after opportunity of hearing to both the parties and uninfluenced by any of the observations made by the Dy. Commissioner (Appeals) or by the Tax Board.

16. In the aforesaid order, This Court has never decided that use of the product by the particular purchaser would be decisive of its nature and classification; and

it was left to be determined by the Assessing Authority as to whether the product was ?poultry feed? as claimed by the assessee without being influenced by the observations made by the appellate authorities including those of the Dy. Commissioner (Appeals). It is noticeable that in the said case, the tenor of the observations of the Dy. Commissioner (Appeals) had been as if the end use of product by the particular purchaser would be decisive of the nature of the product in question but those observations were not approved as such by This Court; and This Court only observed that in the given situation the Dy. Commissioner (Appeals) ?rightly held that the product of the assessee, if is found as poultry feed, then the assessee is entitled the benefit?. This Court has not said that the finding as to whether it were a poultry feed would be reached with reference to the end use of the product. The question of classification of the product was left to be determined by the Assessing Authority, and to be determined without being influenced by what was said by the Dy. Commissioner (Appeals). The said decision in M/s Maheshwari Minerals?s case has no bearing on the question at hands nor supports the case of the present petitioner.

17. The arguments relating to the scope of proceedings u/s 78(5), in the fact situation of the present case, do not carry even a technical value what to say of substance. Apart from other aspects that the goods in movement should be supported by the requisite documents, and such documents should be produced at the time of checking, the requirement further remains that the concerned documents should not be false; and for submission of false document or declaration, one incurs the liability for penalty. The documents produced in the present case declared a commodity liable to taxation (Moong Dal) as something not liable to taxation (Cattle Feed). The declaration and thereby the documents were, therefore, false and the petitioner having knowingly and deliberately drawn such documents cannot escape the liability u/s 78 (5) of the Act of 1994. The submission that such enquiry as to determine the question of taxability of goods in question cannot be made in the proceedings u/s 78 is not correct. Whether a declaration is correct or not is definitely within the domain of the Authority concerned to examine while proceeding u/s 78 of the Act of 1994. A declaration stating a taxable commodity as non-taxable one by giving a different name to the commodity is the mischief very much within the ambit of Section 78 of the Act of 1994; and enquiry into the correctness of the particulars of the goods as stated in the documents and, as a necessary corollary, into the aspect of taxability of such goods, is squarely within the ambit and scope of the proceedings u/s 78 of the Act of 1994.

18. It is noticed that the learned Dy. Commissioner (Appeals) had gone even farther than the case of dealer and termed the goods in question as ?wastage of Moong Dal? without appreciating that there is essential difference in the two terms, ?wastage? and ?damaged?. A damaged material does not, by the damage itself, become wastage. The dealer himself never claimed it to be the ?wastage of Moong Dal?. The learned Dy. Commissioner (Appeals) further proceeded on unwarranted and baseless assumption that the goods in question were not meant

for human consumption and were used as cattle feed. The Tax Board has not committed any error in reversing the order passed by the Dy. Commissioner (Appeals) that proceeded on fundamentally incorrect premise.

19. It may in the passing be observed that apart from the facts as noticed by the Assessing Authority that in the two bills dated 24.12.2002 and 28.01.2003 the petitioner purchased the commodity in question as ''Moong Dal Damage'' and the expression ?cattle feed? got inserted only in the later bill dated 31.01.2003, noticeable further it is that the goods in question were sold by the petitioner dealer only on 11.10.2003. It is difficult to even co-relate the said purchase bills of the month of December 2002 and January 2003 with the sale effected as late as in the month of October 2003, of the goods said to be ?damaged? Moong Dal.

20. Viewed from any angle, there appears no reason to consider any interference in this case.

21. The revision petition fails and is, therefore, dismissed. No costs.

