

(2013) 02 DEL CK 0059

In the Delhi High Court

Case No : ST. Application 14 of 2011, CM Application 12520 of 2011 and ST. Application 15 of 2011, CM Application 12542 of 2011

Milk Food Ltd.

APPELLANT

Vs

Commissioner Vat and Others

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 198 ECR 22 : (2013) 59 VST 1

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : R.P. Bhatt with Mr. S.K. Sharma, for the Appellant; Vineet Bhatia, for the Respondent

Judgement

R.V. Easwar, J.—These are two appeals filed by M/s. Milk Food Ltd., hereinafter referred to either as "the appellant" or as "the dealer" u/s 81 of the Delhi Value Added Tax Act, 2004 relating to the assessment years 1983-84 and 1982-83 respectively. The appellant is a company engaged in the business of manufacture of pure ghee and milk powder of different kinds in its factory at Bahadurgarh (Patiala). It has offices all over India.

2. We may first take up the appeal in STA No. 14/2011. The brief facts giving rise to the appeal are as follows. An assessment was framed on the appellant by order dated 28.03.1988 passed u/s 23(3) of the Delhi Sales Tax Act, 1975 (hereinafter referred to as "DST Act"). In the course of assessment proceedings the assessing authority noted that the appellant had sold most of the goods to registered dealers against ST-1 forms in Delhi. He conducted a cross verification of these sales and found that the purchasing dealers had given a different account of these forms in their ST-2 account. This was put to the appellant for explanation and it was asked to adduce proof of payments, delivery of the goods etc. The appellant filed statements showing the mode of payment by draft. The assessing authority also found that ST-1 forms bearing same numbers were issued to the purchasing dealers. He therefore, wrote letters to get these verified

by the respective wards. On the basis of the enquiries, he came to the conclusion that in all ST-1 forms where the ST-2 accounts given by the purchasing dealers were different and the payment was also not by cheque and the appellant was not able to show proof of delivery of the goods, the exemption claimed by the dealer cannot be allowed. The total turnover in respect of these forms came to Rs. 84,94,942/- which was taxed at the rate of 5%. In respect of ST-1 forms issued to M/s Naval Kishore & Co., M/s Durga Trading Co. and M/s Rajan & Co., the assessing authority refused to allow the exemption against the ST-1 forms on the ground that the payments made by them were not by cheque and the dealer was not able to adduce proof of delivery. Such transactions amounted to Rs. 94,96,443/- which was also taxed at the rate of 5%. The assessment so framed resulted in a demand of Rs. 12,18,211/- and a nominal penalty u/s 55 of the DST Act.

3. The dealer filed an appeal against the assessment order to the Additional Commissioner, Sales Tax. The Additional Commissioner allowed exemption in respect of the turnover of Rs. 48,450/- to M/s Aatma Ram Hukamchand and Rs. 60,562/- on account of sales made to M/s Richo Mal Krishan Swarup. The refusal of exemption claimed in respect of sales to other registered dealers was upheld on the ground that the appellant did not bring on record either before the assessing authority or before him during the appeal proceedings any evidence in support of the claim for exemption. The findings of the assessing authority were thus confirmed, except with regard to the sales made to M/s Aatma Ram Hukamchand and M/s Richo Mal Krishan Swarup. Though the penalty of Rs. 400/- imposed under the Central Sales Tax Act was cancelled, the demand of Rs. 29,278/- under that Act was upheld.

4. The dealer filed a further appeal before the Appellate Tribunal Value Added Tax and raised several contentions. It was argued that a registered dealer had a right to purchase goods free of sales tax from another registered dealer, that the assessee could not therefore collect sales tax on its sales to other registered dealers who purchased the goods from it, that the forms in ST-1 were printed and issued only by the authorities and on assurance that on production of the forms the exemption claimed would be allowed by the sales tax authorities, that once the forms are produced the exemption cannot be denied for extraneous reasons such as mode of payment of the sale price, mode of delivery etc., and that the reason given i.e., that the colour of the paper on which the forms were printed did not appear to be genuine was not substantiated by any clinching proof and in these circumstances the assessing authority and the first appellate authority were not justified in refusing the claim for exemption. It was further submitted that under the second proviso to Section 4(2)(a)(v) of the DST Act the burden is on the purchasing dealer and not upon the appellant who was the selling dealer, and if any breach is committed by the purchasing dealer in the matter of producing the ST-1 forms or in the matter of utilisation of the ST-2 accounts, then the selling dealer-appellant here-cannot be penalised by refusing to accord the exemption. In support of this submission the appellant relied upon

several authorities before the Tribunal. It was also submitted that in the case of sales to M/s Aatma Ram Hukamchand and M/s Richo Mal Krishan Swarup also the payments were by draft and there was no proof of delivery but still the first appellate authority allowed the assessee's claim and the facts being similar in respect of the sales to other registered dealers, exemption should have been given. In respect of the other sales treating them at par with the sales made to above two concerns, the contention of the appellant appears to have been that the sales tax authorities themselves in the two cases have rightly not considered the fact that the payments were made by draft and the absence of any proof of delivery of the goods to be relevant to the consideration of the question of allowing exemption.

5. The above submissions did not find favor with the Tribunal. It took the view that it was open to the assessing authority to compare the colour of the forms and hold that the difference in the colour threw doubt upon the veracity of the forms. As regards the argument based on the differential treatment given to the forms issued by the above two registered dealers and the other registered dealers, the Tribunal held that the forms submitted by these registered dealers bore the R.C. stamp whereas the other forms did not. It placed reliance on its previous order dated 11.05.2001 in the case of M/s Janta Hardware Store v. Commissioner, Sales Tax in appeal No. 395/STT/1999 and held that the contentions of the appellant were without merit. The Tribunal also rejected the argument based on Rule 7 of the DST Rules, 1975. Under this Rule the selling dealer shall produce the copies of the relevant cash memo in case of cash sales or bills in the case of credit sales. The Tribunal rejected the contention based on Rule 7 on the ground that the appellant could not state whether the disputed sales were for cash or on credit. This, coupled with the non-production of any proof of delivery of the goods, according to the Tribunal, raised a reasonable doubt about the genuineness of the ST-1 declarations on the basis of which the sales tax authorities were justified in refusing the exemption. As regards the argument based on burden of proof u/s 4(2)(a)(v) of the DST Act, the Tribunal opined that the proviso to the Section did not cast any burden but only provided for certain conditions under which the deduction was to be allowed. The Tribunal relied on Section 6 of the DST Act which stated that the burden is upon the selling dealer.

6. For the above reasons, the Tribunal held that there was no merit in the appeal of the appellant in respect of the claim for exemption from tax on sales to the purchasing dealers, namely M/s Nawal Kishore & Co., M/s Durga Trading Co. and M/s Rajan & Co. The demands raised and penalties imposed under the Central Sales Tax Act were however set aside by the Tribunal.

7. It is against the above order passed by the Tribunal that the appellant has come in appeal before this Court. After hearing the parties the following substantial question of law is framed for decision: "Whether the Tribunal was right in law in placing the burden upon the dealer to show that the forms issued

by the registered purchasing dealers in ST-1 were genuine and in consequently upholding the assessment and the appellate orders refusing to allow deduction of the sales made by the appellant to them u/s 4(2)(a)(v) of the Delhi Sales Tax Act, 1975?"

8. Section 4 of the DST Act, 1975 prescribes the rate of tax payable by a dealer on the sales effected by him. The tax is payable on the "taxable turnover". Sub-section (2) defines "taxable turnover" as meaning that part of the turnover of a dealer during the prescribed period in any year which remains after deducting therefrom certain sales. These sales are enumerated in Clause (a) of the sub-section. Sub-clause (v) provides for deduction of the sale by the dealer to another registered dealer of different types of goods and sales made under different situations or circumstances. Some of these sales are of goods specified in the registration certificate of the purchasing dealer for being intended for use as raw materials in the manufacture of any goods in Delhi, meant for sale by him inside Delhi or in the course of any other such trade or commerce or in the course of export outside India. Sale of containers or other materials used for the packing of the goods specified in the certificate of registration are also deductible. It is open to the authorities to notify any other exempt sales. This is the gist of sub-section (2) of Section 4. The second proviso as it stood at the relevant time is in the following terms:

Provided further that no deduction in respect of any sale referred to in sub-clause(v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods.

The form in which the purchasing registered dealer has to issue the certificate is given in DST Rules, 1975, the relevant form being form ST-1. Rule 7 prescribes the conditions subject to which a dealer may claim deduction from his turnover on account of sales to registered dealers. Under the Rule, the selling dealer shall produce (a) copies of the relevant cash memos or bills according as the sales are cash sales or sales on credit and (b) a declaration in form ST-1 duly filled in and signed by the purchasing dealer or a person authorized by him in writing. Sub-rule (3) empowers the Commissioner to relax or exempt the dealer from furnishing the declaration or declarations subject to certain conditions in case of hardship or inability to furnish the declaration due to circumstances beyond his control.

9. In our opinion the Tribunal appears to have placed the burden wrongly upon the appellant-dealer. This question first came up before the Supreme Court in *The State of Madras Vs. Radio and Electricals Ltd. etc.*, which arose under the Central Sales Tax Act, 1956 which contained similar provisions. The Court considered the burden of the selling dealer and observed as under:

The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has, in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation, when transactions take place in the course of inter-State trade or commerce. Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificates: but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form "C" the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty u/s 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form "C". He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form "C". There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer.

Relying on the above judgment, and approving a Full Bench judgment of the Allahabad High Court in J.K. Manufacturers Ltd. (Formerly J.K. Cotton Manufacturers Ltd.) Vs. The Sales Tax Officer, Sector II, Kanpur and Others, , the Supreme Court in Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, U.P., Lucknow, held that where under the U P Sales Tax Act, 1948 a purchasing registered dealer submitted a certificate of resale to the selling dealer, it created an irrebuttable presumption i.e. that no further evidence is required in the matter to prove that the goods were sold to a dealer for resale in the same condition and not to be consumed by the purchasing dealer. The following observations of the Supreme Court are relevant:

But it was contended by counsel for the dealer that in order to make the provisions of the Act operative and effective, this was the intention in the instant case and though the rule did not say so that it raised, an irrebuttable

presumption. We are of the opinion that this submission has to be accepted. After all the purpose of the rule was to make the object of the provisions of the Act workable i.e. realisation of tax at one single point, at the point of sale to the consumer. The provisions of rule should be so read as to facilitate the working out of the object of the rule.

An interpretation which will make the provisions of the Act effective and implement the purpose of the Act should be preferred when possible without doing violence to the language. The genuineness of the certificate and declaration may be examined by the taxing authority but not the correctness or the truthfulness of the statements. The sales tax Authorities can examine whether certificate is "farzi" or not, or if there was any collusion on the part of selling dealer - but not beyond - i.e. how the purchasing dealer has dealt with the goods. If in an appropriate case it could be established that the certificates were "farzi" or that there was collusion between the purchasing dealer and the selling dealer, different considerations would arise. But in the facts of this case as noticed before, the facts have been found to the contrary by the appellate authority though that was the finding of the sales tax officer. The question has been reframed for that purpose i.e. to bring about the real controversy in the background of the facts found in this case.

In the facts and circumstances of this case, the question posed is academic because it has not been found by the appellate authority that neither the goods have been consumed by the purchasing dealer and not sold to the consumer in terms of the registration certificates furnished by the purchasing dealer, nor that the certificates were forged or fabricated.

In *A.D.M. Stores and Another Vs. Commissioner of Sales Tax and Others*, , a single judge of the Punjab High Court (Circuit bench) while dealing with similar provisions of the Bengal Finance (Sales Tax Act), 1941 as extended to Delhi, held that the declaration required to be submitted by the purchasing dealer should be a valid declaration at the time at which it is given and the liability of the selling dealer cannot be affected by subsequent invalidation of the declaration by the sales tax authorities. It was further held that the inaction, neglect or even fraud of a registered purchasing dealer cannot result in penalising the innocent selling dealer in the absence of his having been a party to any fraud, deception or misrepresentation. It was argued in that case before the learned single judge on behalf of the revenue that it was quite possible that the declarations may not be valid or that it may be found that no sales in fact were effected by the dealer or that false and spurious declarations were obtained only for the purpose of evading the tax. The learned single judge held that these were not proved and there was no such finding given in the impugned orders.

In the case of *Prince Plastics and Chemical Industries and Others Vs. Commissioner of Sales Tax and Others*, this Court observed as under:

There are three provisos to section 4(2)(a) of the Act, the penultimate declares

that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration in the prescribed form duly filled and signed by a dealer is furnished to the selling dealer. The last proviso is also of immense import as it specifies that where goods are not utilised by the purchasing dealer for the purposes mentioned in Sub-clause (v), the price of such goods shall none the less be deductible from the turnover of the selling dealer and instead, shall be included in the taxable turnover of the purchasing dealer. It indicates that the selling dealer is not responsible for ensuring that goods are used for the purpose for which they are sold (See also *The State of Madras Vs. Radio and Electricals Ltd. etc.*, . Such an investigation would be carried out by the Department and if misutilisation is detected, the value of the transaction will be added to the account of the purchasing dealer. Section 6 of the Act explicitly places the burden of proof on the selling dealer if its case is that any sale is not liable to the payment of tax; this provision rubs against the grain of the petitioners' contentions.

10. The judgments cited above establish the proposition that it is not the burden of the selling dealer to show that the declaration in form No. ST-1 submitted by the purchasing dealer were not spurious or were genuine or that the conditions subject to which the forms were issued to the purchasing dealer by the sales tax department were complied with. This aspect has been dealt with elaborately in the judgments cited above, the bottom-line being that the burden will shift to the selling dealer only if it is shown that the selling dealer and the purchasing dealer had acted in collusion and connived with each other in order to evade tax by obtaining spurious forms of declaration.

11. The assessment order dated 28.03.1988 makes no such allegation. It refers only to certain discrepancies between forms ST-1 and the ST-2 accounts given by the purchasing dealers. That is not for the selling dealer to explain. The assessment order also refers to the unsatisfactory details said to have been given by the selling dealer on account of delivery of goods. This however, has not been elaborated in the assessment order. The "on-the-spot" verification supposedly carried out by the sales tax authorities does not appear to have unearthed any material or evidence to show that there was any collusion or connivance between the appellant and the purchasing dealers. The fact that the colour of the form gave rise to the suspicion that the forms are not genuine could be a starting point for further enquiry but by itself does not establish any guilt on the part of the selling dealer. There appears to have been no further enquiry conducted by the sales tax authorities to prove that the forms are spurious; neither is there any evidence to show that the appellant was in any way connected with the alleged fraud committed by the purchasing dealer.

12. The Tribunal appears to have merely endorsed the assessment and the appellate orders. The ratio of the authorities cited by the appellant, including the judgments referred to supra, has been missed by the Tribunal. They have wrongly placed the burden upon the selling dealer, which is contrary to the law

laid down in the above decisions. We are not able to appreciate how the Tribunal could prefer to follow its earlier order in Janta Hardware Store (supra) dated 11.05.2001 over the judgments cited on behalf of the appellant.

13. The substantial question of law is answered in the negative in favour of the appellant and against the revenue.

14. We may now take up STA No. 15/2011. This appeal pertains to the assessment year 1982-83. The brief facts giving rise to the appeal are these. The appellant was assessed to sales tax. A demand of Rs. 26,90,004/- was raised pursuant to the assessment made u/s 23(6) of the DST Act. An appeal was filed by the dealer against the assessment so made before the Addl. Commissioner of Sales Tax. The appeal was disposed of by order dated 07.10.1985. The main point agitated by the dealer in the appeal was the refusal to allow deduction in relation to the sales made to (i) M/s. Naval Kishore & Co., (ii) M/s. Golden Fruits and Dry Fruits Agencies, (iii) M/s. Raj Kamal Sales Corporation and (iv) M/s. New India Trading Co. u/s 4(2)(a)(v) of the Act. In the assessment order, penalty of Rs. 5,00,000/- had also been imposed on the dealer for furnishing non-genuine ST-1 forms in relation to the aforesaid sales. The dealer pleaded before the Addl. Commissioner, Sales Tax in appeal that it was not aware that the forms in its possession were fake or non-genuine, that it was brought to its notice by the enforcement branch of the sales tax department, that from the forms it was not obvious that they could be fake or non-genuine, that it had discharged its responsibility by ensuring that the entities to whom it sold goods possessed appropriate registration certificates which duly included the items sold to them and that in these circumstances the dealer could not be held responsible for the conduct of the purchasing dealers. It was accordingly submitted that no penalty should be imposed on it. The Addl. Commissioner of Sales Tax rejected all these submissions and held that the appellant - dealer was unable to prove that he was not in collusion with the purchasing dealers and that despite ample opportunity, it had not proved its innocence. The Addl. Commissioner of Sales Tax also noted that the appellant did not take any action against the purchasing dealers even after it was brought to its notice that the ST-1 forms were fake. He also found that the purchasing dealers had made very nominal investment in their business and they were registered only a couple of months before their transactions with the appellant. Further the purchasing dealers were not produced before him by the appellant. In these circumstances, the Addl. Commissioner, sales tax held that the assessing authority was right in disallowing the deduction claimed by the dealer u/s 4 (2)(a)(v) of the DST Act. However, as regards the penalty, he noticed that it was not only imposed under a wrong section but was imposed without affording any opportunity to the dealer of being heard. He opined that the penalty ought to have been imposed u/s 56 of the Act and accordingly set-aside the penalty order and remanded the case to the assessing authority for passing fresh orders as per law.

15. Against the aforesaid order of the Addl. Commissioner, Sales Tax, the

appellant preferred a further appeal to the Appellate Tribunal. By order dated 29.11.1986, the Tribunal held that the refusal to allow deduction against ST-1 forms was wrong and illegal. He observed that the law did not cast any duty upon the selling dealer other than the duty to satisfy himself that the purchasing dealer is a registered dealer and the goods purchased are so specified in the registration certificates. He noted that the sales tax department was not able to prove any collusion between the selling and the purchasing dealer. In this view of the matter the appeal of the dealer was allowed.

16. The Commissioner of Sales Tax preferred a review petition against the order of the Tribunal which was allowed by its order dated 27.06.1988. The earlier order of the Tribunal passed on 27.11.1986 was set-aside and fresh orders were directed to be passed by the assessing authority.

17. In the fresh assessment order passed on 06.04.1992 the assessing authority found against the dealer and held that it was not entitled to the deduction u/s 4(2)(a)(v) of the DST Act and accordingly completed the assessment in which an enhanced demand of Rs. 40,52,234/- was raised. This order was taken up in appeal by the dealer which was dismissed by the first appellate authority, being the Addl. Commissioner of Sales Tax, by order dated 16.11.1992. A further appeal was preferred by the appellant before the Tribunal which was also dismissed by order dated 28.10.2002. It would appear that the appellant filed a writ petition in W.P. (C) No. 4980/2003 before this Court against the order of the Tribunal; it was however permitted to be withdrawn with liberty to the appellant to approach the Tribunal with a review or reference application. The order of this Court was passed on 06.07.2004. Thereafter, the appellant filed a review application before the Tribunal which was disposed of by the Tribunal by order dated 17.11.2004. Paragraphs 15 & 16 of this order are relevant and are as below:-

15. We may that this tax dispute has continued for may (sic) years and that there is no evidence referred to in the orders of the Ld. STO, Ward -36 dated 19.6.85 and of the Ld. Addl. CST dated 7.10.85 from which any finding of prior knowledge or belief of the appellant company about the falsity of the declarations taken from its possession on 13.7.83 and resultant inference about collusion between the appellant company and the four purchasing dealers referred to above during the relevant year can be drawn. We cannot also fail to note that the order of the Tribunal dated 29.6.88 not having been challenged u/s 45 on the ground that it set aside the earlier assessment of tax and interest without recording any explicit finding about the genuineness of its claims of sale of goods to registered dealers and that the directions to enquire into the three aspects referred to in para 3 above could not have been made without any such explicit finding, has become final u/s 43 (7). We further note that the Ld. Addl. CST in his order dated 30.10.92 has made available the result of the enquiry made under rule 38(1) into the 52 declarations relied upon by the appellant company.

16. We therefore proceed to recall the order dated 28.10.92 without reviewing

the order dated 29.6.88 and without setting aside the orders of the Ld. Addl. CST dated 30.10.92 and of Ld. STO dated 6.4.92 u/s 43 (6)(b). We find that the appellant company is not entitled to any relief on its claims for deduction of the turnover on sales made to M/s. Raj Kamal Sales Corporation, M/s New India Trading Co and M/s. Golden Fruits and Dry Fruits Agencies and as such confirm the assessment of tax of Rs. 852553/-. There is however no evidence to deny the relief of deduction u/s 4(2)(a)(v) of Rs. 1,36,67,820/- being turnover on sales made to M/s. Naval Kishore & Co. The tax assessed is therefore reduced by Rs. 683391/- being 5% on Rs. 13667820/-. There is no evidence on the basis of which it could be found that the appellant company, without having sold goods for Rs. 30718880/- to registered dealers, is avoided paying full tax due according to the turnover disclosed in its returns, knowing or having reason to believe that the returns were not true. There is also no evidence of particulars of the amounts found by the Ld. STO to have been unpaid though due according to returns, the periods upto the date of assessment u/s 23(3), viz., 19.6.85 during which such amounts remained unpaid and the rates of interest applied on those amounts, justifying an assessment of as much as Rs. 2503075/- as interest due u/s 27(1). The interest of Rs. 2503075/- is liable to be deleted and is thus deleted. Appeal No. 62/STT/94 against the order dated 8.2.94 of the Ld. Addl. CST confirming the imposition of penalty of Rs. 4281550/- by the order of Ld. STO dated 12.1.93 which is not yet disposed of shall come up for hearing on 11.7.05, subject to amendment of Memo of Appeal in ST 30 wherein there are errors in column 1 and 2. The order dated 28.10.2002 shall stand reviewed accordingly.

18. In the meantime, proceedings for levy of penalty were initiated by notice dated 08.12.1992 which resulted in an ex-parte order passed u/s 56, imposing penalty u/s 50(1)(a) of the Act, of Rs. 42,81,550/- on the dealer for producing a declaration under the second proviso to section 4(2)(a) in Form ST-1 which it knew or had reason to believe to be false. An appeal was filed against the penalty order before the first appellate authority who rejected the appeal by order dated 08.02.1994. A further appeal was filed to the Tribunal which sustained a penalty of Rs. 25,73,072/- by order dated 30.12.2010. This is the order which is impugned in the present appeal.

19. The following substantial question of law is framed: -

Whether the Tribunal was right in law in sustaining the penalty to the extent of Rs. 25,73,072/- out of the penalty of Rs. 42,81,550/- imposed u/s 50(1)(a) of the DST Act?

20. The main contention on behalf of the appellant is that having regard to the observations of the Tribunal in its order dated 17.11.2004 in the assessment proceedings, which order has become final, the Tribunal was not justified in partly sustaining the penalty. It is contended further that the ingredients of section 50(1)(a) of the DST Act have not been satisfied and, therefore, the levy of penalty was contrary to law and untenable. It is submitted that the observations in paragraphs 15 & 16 of the order of the Tribunal dated

17.11.2004 (extracted hereinabove) support the plea of the appellant that it did not know and did not have any reason to believe that the forms ST-1 were false. It is contended that despite the remand by the first appellate authority in the original proceedings by order dated 7.10.1985, the assessing authority has not brought on record any material to show collusion between the appellant and the purchasing dealers. Our attention is also drawn to the fact that the penalty notice was mechanically issued without any application of mind and even the penalty order passed on 12.01.1993 was not a speaking order and that the assessing authority did not discharge the burden placed upon him by the Act to prove the involvement of the appellant in producing forms ST-1 which it knew or had reason to believe to be false.

21. We are satisfied, on an examination of the various orders passed by the sales tax authorities and the Tribunal in both rounds of proceedings that the Tribunal committed an error in sustaining the penalty to the extent of Rs. 25,73,072/-. The Tribunal summed up the facts of the case and submissions of the appellant in paragraph 27 & 28 of the impugned order which are as under: -

27. Now advertent to the case in hand. As per section 56(2) of the Local Act Commissioner is empowered to impose a penalty not exceeding 2.5 times the amount of tax which a person committing an offence u/s 50(1)(a) of the Local Act would have avoided, after giving a reasonable opportunity for hearing. As per section 50 (1) (a) of the Local Act holding a declaration under second proviso to clause (a) of sub-section (2) of section 4 which he knows or has reason to believe to be false is an offence. When the declaration forms found by the survey team in the premises of the appellant were found to be fake then it was for the appellant to at least show as to how it came into possession of these fake declaration forms because this was a fact within the specific knowledge of the appellant and as per judgment reported as Tirugi Narayan Pandey Vs. Commissioner of Sales Tax, , when there are facts, which are within the knowledge of the assessee, then the burden lies on the assessee to discharge the said burden. The fact that fake declaration forms were found by the survey team in the premises of the appellant, itself shows that the appellant was holding these fake declaration forms. Thus the authorities below did not commit any illegality in coming to the conclusion that the appellant had committed an offence u/s 50(1) (a) of the Local Act. Since for the offence u/s 50(1)(a) of the Local Act the appellant could be imposed a penalty amounting to 2.5 times the tax which it would have avoided and so in our considered view the Ld. FAA did not commit any illegality in upholding the order of the Ld. STO ward 63.

28. In so far as the quantum of penalty is concerned, we hold that appellant deserves to be given the benefit of the tax effect amounting to 2.5 times of Rs. 6,83,391/- i.e. a benefit of Rs. 17,08,477.50. Thus, a sum of Rs. 17,08,477.50 is to be deducted from the penalty amount of Rs. 42,81,550/- The appellant is now required to deposit only Rs. 25,73,072.50.

22. We find that the Section 50 of the DST Act relates to offences which are

punishable with rigorous imprisonment or with fine or with both. It does not provide for any penalty. However, section 56 provides for penalty for concealment of sales or furnishing inaccurate particulars or making false representation. Sub-section (2) is in the following terms: -

56. Penalty for concealment of sales or furnishing inaccurate particulars or making false representations.-

(1)

(2) If a person commits an offence under clause (a) of section 50, the Commissioner or any person appointed under sub-section (2) of section 9 to assist him may, after giving that person a reasonable opportunity of being heard, by order in writing, impose upon such person by way of penalty, a sum not exceeding two and a half times the amount of tax which would thereby have been avoided.

23. Reading section 50(1)(a) together with section 56(2), it is seen that they provide for penalty on the dealer who holds, gives, produces or accepts a declaration under the second proviso to section 4(2)(a)(v) which he knows or has reason to believe to be false. It is the burden of the assessing authority to show that the appellant knew or had reason to believe that the ST-1 forms were false. Nothing has been brought on record to discharge this burden. According to the Tribunal, the mere fact that the forms were found in the premises of the appellant during the survey conducted on 13.07.1983 was sufficient to show that the appellant knew that the forms were false. We are unable to uphold this broad proposition. In several judgments, both of the Supreme Court and of the High Courts which we have referred to while disposing of the appeal in STA No. 14/2011, it has been held that it was for the Sales Tax authorities to establish that the certificates were false to the knowledge of the selling dealer or that there was collusion between the selling and purchasing dealers. The Supreme Court recognised that the seller can have no control over the purchaser in such transaction and has to necessarily rely upon the representation made to him by the purchasing dealer (*State of Madras v. M/s. Radio & Electricals Ltd. and Anr.*) (*supra*). According to the Supreme Court, the duty of the selling dealer is only to satisfy himself that the purchaser is a registered dealer and the goods purchased are specified in his registration certificates and no further. He is under no obligation to see that the application of goods for the purpose for which it was represented that they were intended to be used. This indicates that for the acts of the purchasing dealer, the selling dealer cannot be held responsible. The ST-1 forms are issued by the sales tax authorities to registered dealers. The selling dealer is accordingly entitled to rely upon the certificates as having been genuinely issued. In *A.D.M. Stores and Anr. v. Commissioner of Sales Tax & Ors.* (*supra*) it was held that the inaction, neglect or even a fraud of a registered purchasing dealer cannot result in penalising the innocent selling dealer in the absence of his having been a party to the fraud, deception or misrepresentation. However, if there is evidence or material on record to show the involvement of

the selling dealer in the procurement of fake or false ST-1 forms, the penal provisions of section 50(1)(a) read with section 56(2) of the Act would come into play. Moreover, the appellant is right in its contention that the observations of the Tribunal in the order dated 17.11.2004, which has become final, are in its favour. The other decisions referred to by us (*supra*) would equally apply to the case of penalty. There is no evidence to show that the appellant was in any way involved in the procurement of the allegedly fake or false ST-1 forms, so that any culpable knowledge can be imputed to it. The Tribunal failed to note that the main ingredient of section 50(1)(a) - that the dealer should know that the forms are false or had reason to believe that they are false - has not been proved by the Sales-Tax authorities. We accordingly hold that no penalty was payable by the appellant. The Tribunal, therefore, committed an error in sustaining the penalty to the extent of Rs. 25,73,072/- The substantial question of law is accordingly answered in the negative, in favour of the appellant dealer and against the Commissioner of Sales Tax. In the result both the appeals filed by the appellant are allowed. In the circumstances there shall be no order as to costs.