(2009) 07 AHC CK 0214

In the Allahabad High Court

Case No : Commercial Tax Revision No. 481 of 2009

Multitex Filtration Engineering Ltd. APPELLANT

Vs

Commissioner, Commercial Taxes, U.P. Lucknow. RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:
Uttar Pradesh Value Added Tax Rules, 2008 — Rule 54

Citation : (2009) 07 AHC CK 0214

Hon'ble Judges : Rajes Kumar, J

Final Decision : Dismissed

Judgement

1. This is a revision under Section 58 of the U.P. Value Added Tax Act (hereinafter referred to as the "VAT Act") challenging the order of the Tribunal dated 2062009 in appeal No. 333 of 2009.

2. The brief facts of the case are that the applicant is a registered dealer under the Value Added Tax Act and carrying on the business of manufacture and sale of Industrial Filters/Filtration System. The case set up by the applicant is as follows :

The applicant is carrying on the business of manufacture and sale of Industrial Filters/Filtration System. The applicant received two purchase orders from M/s UOP India (Pvt.) Limited, Sector 43, Sushant Lok, PhaseI, Gurgaon for manufacture and supply of piping and value skid along with loose piping and spare parts of 12 polybed & 5 Polybed PSA Unit of Hydrogen generation plant under the MS/HSD quality improvement and residue upgradation project of Gujarat Refinery, Vadodra (Gujarat), which is a unit of Indian Oil Corporation Limited. The Indian Oil Corporation Limited, New Delhi, which is a Government of India Undertaking, placed an order dated 14122007 for its Refinery at Gujarat for the aforesaid project on UOP is associated. Since the Indian Oil Corporation Ltd. has placed the purchase order on UOP for its Refinery at Vadodra (Gujarat) i.e. Gujarat Refinery; hence UOP in turn has placed two purchase orders on the applicant for manufacture and supply of piping value skid. For completing the aforesaid order for manufacture and supply of piping and value skid, some automatic valves which were imported from outside the country by Gujarat Refinery were to be given to the applicant as free issue material for the manufacture of value skid for the aforesaid unit of Gujarat Refinery. The cost of this material, namely, automatic values etc. imported from outside the country by Gujarat Refinery was not included in the contract value was to be supplied by Gujarat Refinery to the applicant free of cost. The ownership on these materials always remained with the Gujarat Refinery and the said goods cannot be used for any other purpose except for the aforesaid purpose of manufacturing of piping and valve skid. Since the applicant has to receive the goods i.e. imported automatic valve from Gujarat Refinery hence the applicant sent two Forms 38 to Gujarat Refinery with the instruction to enclose the same with the goods i.e. imported Automatic Valves which were to be dispatched from Gujarat to the applicant. The value skid which was to be manufactured by the applicant by including the imported automatic valves were to be sent back to Gujarat Refinery of Indian Oil Corporation Ltd. Gujarat Refinery which is also a Government of India Undertaking of Indian Oil Corporation Ltd. sent the imported automatic valves along with their returnable Excise Gate Pass duly endorsed by Central Industrial Security Force, challancumpacking slip, dispatch list as well as the intimation given to the Deputy Commissioner, Central Excise, Vadodra regarding dispatch of the aforesaid goods.

3. It is contended that Indian Oil Corporation Limited had dispatched automatic butterfly valves and automatic glove valve InLine Silencer in 119 pieces, packed in 12 wooden cases against challan No. 44 dated 3132009 to the applicant. It is claimed that seven wooden cases were dispatched in Truck No, HR38H/2535 and five wooden cases were dispatched in Truck No. RJ32GA/4335. The first consignment of seven packages had reached to the applicant. However, when the Truck No. RJ32GA/4335 loaded with the aforesaid wooden cases were in transit, the Mobile Squad, Gautam Budh Nagar intercepted the truck on 442009. The driver of the vehicle produced the G.R. No. 034167 dated 3132009, Form No. 38, No. A.A. 3476783 of the applicant and a covering letter written by the I.O.C.L., Vadodra to Deputy Commissioner, Excise and Custom, DivisionV, Vadodra dated 1232009, challancum packing list No. J.M.R.O.W./44/200809 dated 3132009. On enquiry it was found that in Form 38, column No. 6 was not filled i.e. bill, cash memo, challan, tax invoice etc. were not mentioned in Form 38. On this ground the goods were detained and subsequently seized. A sum of Rs.52,12,500/ has been demanded towards security in cash. The applicant filed an application under Section 48 (7) of the Act before the Joint Commissioner (SIB), Gautam Budh Nagar. The Joint Commissioner (SIB) vide order dated 2942009 has upheld the seizure of the goods but has reduced the amount of security to Rs.11,12,000/.

4. Being aggrieved by the order, the applicant filed appeal before the Tribunal. The Tribunal by the impugned order dismissed the appeal. The Tribunal has confirmed the seizure of the goods on the ground that in Form 38, column No. 6 was not filled. The bill, challan number, etc. were not mentioned in the Form which shows intention to evade the tax as the said Form could be used again for

the import of the same quantity, weight and value of the goods. The Tribunal has upheld the seizure of the goods and demand of security following the decision of this Court in the case of M/s KMGS Road Signs Pvt. Ltd., New Delhi v. Commissioner, Commercial Taxes, U.P., Lucknow, reported in 2009 NTN (Vol. 39) 263. The decision of the Apex Court in the case of Guljag Industries v. CTO, reported in (2007) 7 SCC 269 : (2007 AIR SCW 5044) and the decision of the Apex Court in the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2009) 1 SCC 308 : (2008 AIR SCW 8263)

5. Heard Sri Bharat Ji Agarwal, learned Senior Advocate, assisted by Sri Kunal Srivastava, learned counsel appearing for the applicant and Sri B.K. Pandey, learned Standing Counsel.

6. Learned counsel for the applicant submitted that along with the goods all the necessary documents, namely, challan, GR, etc. were available. The declaration Form relating to the goods was also available but inadvertently in column No. 6 of the Form challan number was not mentioned. The goods were not meant for sale but was a raw material and in the circumstances, there was no intent to evade the tax and, therefore, seizure of the goods is bad in law and is liable to be set aside. He further submitted that circular dated 322009 issued by the Commissioner of Trade Tax says that in case if the column Nos. 2 and 3 are filled and the other column is not filled, the same may be got filled and the goods may not be seized. Such circular is binding on the authorities and, therefore, the seizure is bad in law and is liable to be set aside. In support of the aforesaid contention, he relied upon the decisions in the case of M/s. Modi Rubber Ltd., Modi Nagar, Ghaziabad v. State of U.P. and others, reported in [1988 UPTC 1415], in the case of M/.s. Flosyn Fragrances, Noida v. Commissioner of Trade Tax, U.P., Lucknow, reported in 2005 NTN (Vol.26) 405 and in the case of Commissioner of Trade Tax v. M/s. Moti lal Duli Chand Pvt. Ltd., Kanpur, reported in [2007 UPTC 245].

7. Learned Standing Counsel submitted that mentioning of bill and challan in Form 38 is very material. Only on mention of challan and bill it can be said that the said Form 38 relates to the said challan or bill and the goods mentioned therein which are being transported. Otherwise for the same nature of goods, quantity and weight, other consignment can be imported against the said declaration Form with the intent to escape one transaction. He submitted that when other columns have been filled, there could not be any reason for not mentioning the challan number in column No. 6. He submitted that column No. 6 has been deliberately omitted to be filled with the intent to evade the tax. He submitted that if the column No. 6 which requires very important description, namely, mentioning of challan, bill etc. has not been filled, it amounts that the declaration Form was not properly filled and the goods were not being imported against the declaration Form. In the absence of properly filled Form, the Apex Court in the case of Guljag Industries v. CTO (2007 AIR SCW 5044) (supra) and in the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2008

AIR SCW 8263) (supra) has held that goods sought to be imported against the Form not properly filled amounts to import of goods without declaration Form. The Apex Court further held that in these circumstances, the presumption is that the import of goods are with intent to evade the tax and the goods are liable to be seized and liable for penal action. Relying upon the aforesaid decision the learned single Judge of this Court in the case of M/s. KMGS Road Signs Pvt. Ltd. New Delhi v. Commissioner, Commercial Taxes, U.P., Lucknow (supra) held that in case if the columns are not filled properly, the goods are liable to be seized.

8. Learned Standing Counsel further submitted that the circular relied upon by the learned counsel for the applicant is not applicable to the present case. He submitted that the circular says that in case if either of the column Nos. 2 and 3 are not filled, the same may be got filled and the goods may not be detained. It does not say that if column No. 6 is not filled, the goods may not be seized.

9. Having heard learned counsel for the parties, I have gone through the impugned orders of the Tribunal and authorities below and the rival submissions.

10. The goods have been seized under Section 50 of the VAT Act. Rule 54 of the U.P. Value Added Tax Rules, 2008 (hereinafter referred to as "VAT Rules") provides the procedure for furnishing of declaration form as contemplated under Section 50 of the VAT Act. In this view of the matter, it would be appropriate to refer Section 50 of the VAT Act and Rule 54 of the VAT Rules.

"Section 50. Import of goods into the State by road against declaration. (1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State any goods other than the goods named and described in schedule1 in such quantity or measure or of such value, as may be notified by the State Government in this behalf, in connection with business, shall obtain the prescribed form of declaration, in the prescribed manner from the assessing authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.

(2) (a) where such goods are imported, brought or otherwise received into the State by registered dealer, he shall carry such declarations or documents as may be prescribed, (b) where the goods are imported, brought or otherwise received into the State by a person otherwise than in connection with business, he may likewise carry such certificates and documents as may be prescribed.

(3) The driver or other person incharge of any vehicle carrying any goods referred to in the preceding subsections shall stop the vehicle at every such checkpost or barrier or, when so required by an officer authorised under subsection (1) of section 45 or subsection (1) of section 48, at any other place,

and keep it stationary for so long as may be considered necessary by the officer incharge of the checkpost or barrier or the officer authorised under subsection (1) of section 45 or sub section (1) of section 48, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding subsections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.

(4) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding subsections and if, for reasons to be recorded, he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods. (Emphasis provided).

(5) The provisions of subsections (3), (7), (8), (9) and (10) of section 48 shall mutatis mutandis apply to goods detained under subsection (6), as they apply to goods seized under that section.

Rule 54. Establishment of CheckPosts. (1) The Government may, by notification in the Gazette, direct, under section 49, the establishment of checkposts and barriers at such places within the State as may be specified in the notification.

(2) When a CheckPost is set up upon a thoroughfare or a road, barriers may be created across the road or thoroughfare in the form of contrivance to enable vehicles or vessels being intercepted, detained or searched.

(3) (a) The owner, driver any other personincharge of the vehicle or vessels shall, in respect of such goodscarried in the vehicle or the vessels as are notified under or referred to in subsection (t) of section 50 and exceeding the quantity, measure or value specified in the notification therein, carry with him the following documents

(i) form of declaration for import in Form XXXVIII or certificate in Form XXXIX hereinafter in these rules referred to as declaration or certificate, as the case may be, in duplicate; duly filled and signed by the purchaser and seller of the goods or where goods are transferred otherwise than by way of sale, by consignor and consignee of the goods with status and address.

(ii) Cash memo, bill, invoice or challan;

(iii) authorization for transit of goods/goods challan (hereinafter referred to as trip sheet) in triplicate.

(b) The owner, driver or any other person incharge of the vehicle or vessel shall in respect of all other goods carried in such vehicle or vessel carry with him a trip sheet in triplicate.

(4) (a) A declaration or certificate

(i) in respect of which a report has been made under subrule (9) or rule 56 or subrule (8) of rule 57, or

(ii) which is declared as obsolete and invalid by the Commissioner under subrule (13) of rule 56 or subrule (10) of rule 57, shall not be valid with effect from the date of the report or the date from which it is so declared, as the case may be, for the purpose of subrule (3).

(b) A certificate whose period of validity as specified in subrule (4) of rule 57 has expired shall not be valid for the purposes of subrule (3).

(5) The owner of the truck or vessel or the transport agency, forwarding agency or clearing agents, as the case may be, shall deliver to the consignee, while delivering the consigned goods, the duplicate copy of the declaration or certificate, as the case may be.

(6) The trip sheet referred to in subrule (3) shall be in Form XL and shall contain details in respect of all goods referred to in clauses (a) and (b) of subrule (3) being carried by a vehicle or vessel. Separate trip sheets shall be submitted for goods meant for different destinations.

(7) The commissioner may from time to time issue instructions with regard to the procedure to be followed regarding import of goods from out of State and submission of declaration or certificate before assessing authority."

11. Section 54 (14) of the Act which provides levy of penalty reads as follows:

Section 54 (14). Penalties in certain cases.

(1)

(2)

(3)

14

Where the dealer or any other person, as the case may be:

(i) imports or attempts to import or abets the import of any goods, in contravention of the provisions under Section 50 or section 51 with a view to intention of evading payment of tax on sale of

(a) such goods; or

(b) goods manufactured, processed or packed by using such goods; or

(ii) transports, attempts to transport any taxable goods in contravention of any provisions of this Act;

40% of disclosed value of goods

12. Section 50 (1) provides that any person who intends to bring, import or otherwise receive, into the State from any place outside the State any goods other than the goods named and described in schedule1, shall obtain the prescribed form of declaration. Section 50 (2) provides that where such goods are imported, brought or otherwise received into the State by registered dealer, he shall carry such declarations or documents as may be prescribed. Section 50 (3) provides that the driver or other person incharge of the vehicle shall allow the authorized officer to search the vehicle and inspect the goods and all documents referred to in section 50 (1) of the Act. Section 50 (4) provides that while making the search or inspection if the officer finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in Section 50 (1) & (2) of the Act if, for reason to be recorded, hg is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods. Section 50 (5) provides that subsections (3), (7), (8), (9) and 10 of section 48 shall mutatis mutandis apply to goods detained under subsection (6), as they apply to goods seized under that section. Rule 54 (3) (a) provides the owner, driver any other person incharge of the vehicle or vessel shall, in respect of such goods carried in the vehicle shall carry with him(1) the declaration form for import in Form 38 or certificate in Form 39 in duplicate duly filled and signed by the purchaser and seller of the goods or where goods are transferred otherwise than by way of sale, (2) cash memo, bill, invoice or challan and (3) authorization for transit of goods/ goods challan in triplicate. Rule 55 (3) provides that if on such examination, the officer finds or has reason to believe that any one or more consignments are not covered by one or more of the documents referred to in subrule (3) of rule 54; or any such documents in respect of any consignment is false, bogus, incorrect, incomplete or invalid, the officer shall issue a notice to the driver or personincharge of the vehicle or vessel why the goods should not be seized. Rule 55 (5) provides that if the officer is not satisfied with the explanation, he shall order the seizure of the goods. Thus, in brief, the aforesaid provisions show that the person who intends to import the goods in connection with the business any goods other than goods named and described in schedule1 should carry the declaration form, cash memo, invoices or challan and shall produce the same to the officer concerned at the time of inspection. Such documents should be proper and genuine documents. The declaration form should be duly filled and signed by the purchaser and seller of the goods. In case of any discrepancy being found, the officer concerned shall issue a show cause notice and under Section 50 (4) for the reason to be recorded after giving an opportunity of being heard, for the reason to be recorded that such goods were being so transported in an attempt to evade the assessment or payment of tax due are likely to be due under this Act, he may order detention of such goods. Section 54 (14) of the Act provides for levy of penalty for the contravention of provisions of Section 50 or Section 51 with the view to evade payment of tax or transports, attempts to transport any

taxable goods.

13. Prior to the introduction of U.P. Value Added Tax Act, The U.P. Trade Tax Act was in force. Section 28A of the U.P. Trade Tax Act provided the import of goods against the declaration form in case the goods are being imported for business purposes. Subsection (6) of Section 28A of the Act provided the detention of the goods. Perusal of Section 28A (1) and 28A (6) as substituted by U.P. Amendment Act No. 33 of 1979 reads as follows:

"28A. Import of goods into the State against declaration: (1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State, any goods liable to tax under this Act in such quantity or measures or, such value as exceeds the quantity, of measure or value notified by the State Government in that behalf, in connection with business shall obtain the prescribed form of declaration on payment of the prescribed fee from the Assessing Authority having jurisdiction over the area where his principal place of business is situated or in case there is no such place where he ordinarily resides.

Explanation. For the purposes of this subsection it shall be presumed that the goods were intended to be brought, imported or otherwise received into the State in connection with business unless the contrary is proved.

28A (6) When the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by proper and genuine documents referred to in the preceding subsections and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act he may order detention of such goods." (emphasis provided).

14. Section 28A has been subsequently amended. The amended Section 28A (1) and Section 28A (6) of the Act prior to the introduction of U.P. Value Added Tax Act reads as follows:

"Section 28A. Import of goods into the State against declaration. (1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into State from any place without the State, any goods other than the goods exempt under clause (a) of Section 4 in such quantity or measure or of such value as exceeds,

(a) (i) twenty kilograms in the case of foodgrains, cereals, pulses, soyabeen, and all products thereof, and all raw materials including resin, rosin and oil seeds used for extracting oils of any kind; and

(ii) rupees fifty, in the case of other goods; or

(b) the quantity, measure or value notified by the State Government in that behalf, in connection with business, shall obtain the prescribed form of declaration on payment of the prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.

Section 28A (6). Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by proper and genuine documents referred to in the proceeding sub sections and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods."

15. Section 15A (1) (o) of the Act provides for the penalty in case of default of Section 28A. Section 15A (1) (o) reads as follows:

"(o) imports or transports, or attempts to import or transport, abets the import of transport of any goods in contravention of the provisions of Section 28A; or"

16. Perusal of the aforesaid provisions show that though Section 28 A (1) was amended but there is no amendment in Section 28A (6). It further shows that the language of Section 28A (6) is synonymous to language of Section 50 (4) of the Act. The language of Section 15A (1) (o) and Section 54 (14) are also almost similar. Section 28A came up for consideration before the Division Bench of this Court in the case of Jain Shudh Vanaspati Ltd., Ghaziabad and others v. State of U.P. and others, reported in [1983 UPTC 198]. One of the important aspect which was considered by the Division Bench was whether the goods could be seized and the penalty could be levied merely on the ground that the goods were not accompanied by declaration form or the declaration form was found to be false. The Division Bench held that in such a situation where the goods are not accompanied by declaration form and form is found to be false, the goods cannot be seized unless a case of an attempt to evade the tax or payment of tax due or likely to be due is made out. The Division Bench held that for the seizure of the goods it is a condition precedent to make out a case that there was an attempt to evade the tax. Paragraphs 23 and part of paragraph 27 of the Division Bench judgment reads as follows:

Para 23. "The provision contained in Section 28A as it stands after enactment of U.P. Act No. 33 of 1979 are materially different. It cannot be said that there is any assumption underlying therein that the goods to which the provision of Section 28A applies has actually been sold inside the State and the section does not authorise the sales tax authorities either to seize the said goods or to penalize the importer thereof on any such assumption. Its present basis is the attempt to evade tax. The power to detain the goods and levy penalty in respect thereof cannot be exercised merely for the reason that the said goods were not accompanied by the requisite documents or that the documents accompanying them were false. This power can be exercised only if the goods detained are not accompanied by the requisite documents or that the documents accompanying them are false and if there is material before the detaining authority to indicate that the goods are being imported in an attempt to evade assessment or payment of tax due or likely to be due under the Act. The instant case, therefore, in our opinion, clearly falls outside the ratio of the case of Checkpost Officer v. K.P. Abdulla & Bros., 27 STC 1 as decided by the Supreme Court.

Para 27........................."These provisions make it absolutely clear that the power to seize and detain the goods under subsection (6) of Section 28A cannot be exercised merely because the goods, when they reach the checkpost, were not accompanied by the declaration form contemplated by Section 28A (1). The real occasion to detain the goods under subsection (6) arises only if the goods are not accompanied by the requisite documents and there is material before the check post officer on which he can reasonably record a satisfaction that the person importing the goods was attempting to evade assessment or payment of sales tax due or likely to be due under the Act. Obviously, if the authorities have been acting in the manner as alleged by the learned counsel for the petitioners, they have not been acting inconsonance with the provisions of Section 28A of the Act.............................."

Para 31. "The position in the instant case, however, is different inasmuch as the power to detain the goods cannot be exercised by the officer at the checkpost for any unspecified reason. He can do so only if apart from any shortcoming in production of the declaration contemplated by Section 28A (1) and other prescribed documents, there is material before him on which he can feel satisfied that an attempt was being made to evade payment of tax or other sum due or likely to be due under the Act. Requisite satisfaction has to be arrive at on objective consideration and for reasons to be recorded by the check post officer. Moreover, the provisions of Section 28A read along with the provisions of Section 13A (2), (6) and (8) go to show that the power to detain the goods is exercised with a view to make the same available for realisation of penalty that may eventually be imposed under Section 15A of the Act."

17. Let us now examine the decisions of the Apex Court in the case of Guljag Industries v. CTO : (2007 AIR SCW 5044) (supra) and in the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2008 AIR SCW 8263) (supra). In the case of Guljag Industries the fact of the case was that 47 barrel of chemicals were transported from Vishakapattanam to M/s. Guljag Industries. At the checkpost, gate pass was produced. One Form ST 18A as required under Rule 25 (3) of the Rajasthan Sales Tax Rules, 1955 (hereinafter referred to as "RST Rules") was also produced but on verification it was found that the goods were not declared in Form ST 18A though it was duly signed. On this basis it was

inferred that there was a violation of Section 22A(3) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "RST Act") and the penalty was levied. The matter went to the Apex Court. The Apex Court held as follows:

"There is dichotomy between contravention of Section 78 (2) of the said Act which invites strict civil liability on the assessed and the evasion of tax. When a statement of import/export is not filed before the A.O. it results in evasion of tax, however, when the goods in movement are carried without the declaration Form No. 18A/18C then strict liability comes in, in the form of Section 78(5) of the said Act. Breach of Section 78(2) imposes, strict liability under Section 78(5) because as stated above goods in movement cannot be carried without Form No. 18A/18C. We are concerned with the goods in movement being carried without supporting declaration forms. The object behind enactment of Section 78(5) which gives no discretion to the competent authority in the matter of quantum of penalty fixed at 30 per cent of the estimated value is to provide to the State a remedy for the loss of revenue. The object behind enactment of Section 78(5) is to emphasise loss of revenue and to provide a remedy for such loss. It is not the object of the said Section to punish the offender for having committed an economic offence and to deter him from committing such offences. The penalty imposed under the said Section 78(5) is a civil liability. Willful concealment is not an essential ingredient for attracting the civil liability as in the case of prosecution. Section 78(2) is a mandatory provision. If the declaration Form 18A/18C does not support the goods in movement because it is left blank then in that event Section 78(5) provides for imposition of monetary penalty for noncompliance. Default or failure to comply with Section 78(2) is the failure/ default of statutory civil obligation and proceedings under Section 78(5) is neither criminal nor quasicriminal in nature. The penalty is for statutory offence. Therefore, there is no question of proving of intention or of mens rea as the same is excluded from the category of essential element for imposing penalty. Penalty under Section 78(5) is attracted as soon as there is contravention of statutory obligations. Intention of parties committing such violation is wholly irrelevant. Moreover, in the present case, we find that goods in movement carried with Form No. 18A/18C. The modus operand adopted by the assessees itself indicates mens rea. This is not the case where goods in movement are carried without the declaration forms. In the present matter, as stated above, goods in movement were carried with the declaration forms. These forms were duly signed, however, material particulars were not filled in. The explanation given by the assessees in most of the cases is that they are not responsible for the misdeeds of the consignors. The other explanation given by the assessees is regarding the language problem. There is no merit in these defences. They are excuses. The declaration forms were unfilled so that they could be used again and again. The forms were collected by the consignee from the said Department. The consignee undertakes to see that the value of the goods is supplied by the consignor. It is not open to the consignee to keep the column in respect of the description of goods as blank. Even the column dealing with nature of transaction is left blank. The consignee is the buyer of the goods. He knows the descriptions of the goods which he is supposed to buy. There is no reason for leaving that column blank. Therefore, there are no special circumstances in any case for waiver of penalty for contravention of Section 78(2). The assessees were fully aware that the goods in movement had to be supported by Form ST 18A/18C. Therefore, they made the goods travelled with the forms. However, the said forms are left blank in all material respects. Therefore, A.O. was right in drawing inference of mens rea against the assessees. It has been repeatedly argued before us that apart from the declaration forms the assessees possessed documentary evidence like invoice, books of accounts etc. to support the movement of goods and, therefore, it was open to the assessees to show to the competent authority that there was no intention to evade the tax. We find no merit in this argument. Firstly, we are concerned with contravention of Section 78(2) which requires the goods in movement to travel with the declaration in Form 18A/18C duly filled in. It is Section 78(2) (a) which has been contravened in the present case by the assessees by carrying the goods with blank forms though signed by the consignee. In fact, the assessees restored to the above modus operandi to hookwink the competent officer at the checkpost. As stated above, if the form is left incomplete and if the description of the goods is not given then it is impossible for the assessing officer to assess the taxable goods. Moreover, in the absence of value/price it is not possible for the A.O. to arrive at the taxable turnover as defined under Section 2(42) of the said Act. Therefore, we have emphasised the words "material particulars" in the present case. It is not open to the assessees to contend that in certain cases of inter State transactions they were not liable in any event for beingtaxed under the RST Act 1994 and, therefore, penalty for contravention of Section 78(2) cannot be imposed. As stated hereinabove, declaration has to be given in Form 18A/18C even in respect of goods in movement under interState sales. It is for contravention of Section 78(2) that penalty is attracted under Section 78(5). Whether the goods are put in movement under local sales, imports, exports or interState transactions, they are goods in movement, therefore, they have to be supported by the requisite declaration. It is not open to the assessee to contravene and say that the goods were exempt. Without disclosing the nature of transaction it cannot be said that the transaction was exempt. In the present case, we are only concerned with the goods in movement not being supported by the requisite declaration.

Before concluding, we may mention that in this batch of civil appeals we have civil appeals filed by the Department. These civil appeals relate to cases where specified documents did not accompanied the goods in movement. The lead case in that regard is Civil Appeal No. 5240 of 2005 Assistant Commercial Taxes Officer v. M/s. Guljag Industries Ltd. filed by the Department. We make it clear that our judgment is basically confined to cases where blank/incomplete Form 18A/18C had accompanied the goods in movement. Whatever we have stated above is in the context of the incomplete Form 18A/18C travelling along with the goods in movement. However, Civil Appeal No. 5240 of 2005 and such other civil appeals filed by the State (Department) are those cases where the documents were not accompanied the goods in movement, like, the bills of sale, bills of transport etc. In Civil Appeal No. 5240 of 2005 the facts of which have been reproduced hereinabove, show that the case was confined to documents not accompanying the goods in movement. Therefore, the said appeals stand on a different footing. They have nothing to do with incomplete forms travelling along with the goods in movement. These civil appeals filed by the State (Department) shall be decided in the light of the judgment of this Court in D.P. Metals (supra). However, cases where goods in movement were accompanied by Form No. 18A/18C without duly signed but incomplete in material particulars like description of goods shall be governed by the law discussed hereinabove by us.

For the aforestated reasons, we hold that Section 78(5) of the RST Act 1994 (Section 22A (7) of the RST Act 1954) is the section enacted to provide remedy for loss of revenue and it is not enacted to punish the offender for committing economic offence and, therefore, mens rea is not an essential ingredient for contravention of Section 78(2) of the RST Act, 1994. That, the breach of Section 78(2) would attract the levy of penalty under Section 78(5) in cases where the goods in movement have travelled with an incomplete Form No. 18A/18C. We accordingly uphold the judgment of the High Court of Rajasthan in Sales Tax Revision No. 1023/2002 dated 141003 (which is annexed as page No.1 of the appeal paper book in Civil Appeal No. 5197 of 2005 filed by M/s. Guljag Industries v. Commercial Taxes Officer)."

18. In the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2008 AIR SCW 8263) (supra), the Apex Court following its earlier decision in the case of Guljag Industries v. CTO (2007 AIR SCW 5044) (supra) held that in case while importing the goods declaration form was found to be unfilled, it is a serious lapse and penalty is leviable.

19. At this stage it is relevant to refer Sections 78 (4) and 78 (5) of the Rajasthan Sales Tax Act.

"Section 78 (4). Where any goods in movement, other than exempted goods, are without documents, or are not supported by documents are referred to in Subsection (2), or documents produced appear false or forged, the incharge of the checkpost or the officer empowered under subsection (3), may,

(a) direct the driver or the person incharge of the vehicle or carrier or of the goods not to part with the goods in any manner including by retransporting or rebooking, till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) seize the goods for reasons to be recorded in writing and shall give a receipt of the goods to the person from whose possession or control they are seized;

(c) release the goods seized in Clause (b) to the owner of the goods or to anybody else duly authorised by such owner, during the court of the proceeding if adequate security of the amount equal to the estimated value of the goods is furnished.

Section 78 (5). The Incharge of the checkpost or the officer empowered under subsection (3) after having given the person incharge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of Clause (a) of subsection (2) or for submission of false or forged documents or declaration, (a) penalty equal to thirty per cent of the value of such goods."

20. It would be appropriate to mention here that there is a difference in the provision under the Rajasthan Act and the VAT Act. Under the Rajasthan Act, Section 78 (4) provides for the seizure of goods. It says where any goods in movement, other than exempted goods, are without documents, or are not supported by documents are referred to in Subsection (2), or documents produced appear false or forged, the incharge of the checkpost or the officer empowered under subsection (3), may seize the goods for reasons to be recorded in writing and shall give a receipt of the goods to the person from whose possession or control they are seized, subsection (5) of Section 78 further provided that after giving reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of Clause (a) of Subsection (2) or for submission of false or forged documents or declaration, (a) penalty equal to thirty per cent of the value of such goods. In the said provision neither for the seizure of the goods nor for the levy of penalty "an attempt to evade the tax or assessment or payment of tax due or likely to be due under this Act" is a condition precedent. While under Section 50(4), for the purposes of seizure, the attempt to evade assessment or payment of tax is a condition precedent. The same requirement is also for the purposes of levy of penalty under Section 54 (14) of the Act. In this view of the matter the decision of the Apex Court in the case of Guljag Industries v. C.T.O. and Assistant Commercial Tax Officer v. Bajaj Electricals Limited : (2007 AIR SCW 5044) are to be read and understood with reference to the provisions of Rajasthan Act.

21. At this stage, it would be appropriate to consider the decision of the Apex Court in the case of State of Rajasthan and another v. D.P. Metals, reported in 2002 (1) SCC 279 (AIR 2001 SC 3076) which also arose from the Rajasthan Sales Tax Act and has been distinguished in the case of Guljag Industries v. CTO (2008 AIR SCW 5044) (supra) and in the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2008 AIR SCW 8263) (supra). In the said case, the assessee firm manufactured stainless steel sheets. The assessee was a registered dealer. On 2211997 a truck was inspected by CTO. The same was found within Form ST 18A. A show cause notice was issued to the assessee. After the hearing, a penalty was levied under Section 78(5) of the RST Act, 1994. It

was held that under Section 78(5) levy of penalty was on the person in charge of the goods. It was held that the said penalty was leviable under two circumstances. Firstly, if there was noncompliance with Section 78(2)(a) of the said Act, namely, that it was not carrying the documents mentioned in that clause. Secondly, if false or forged documents/declaration was submitted then penalty under Section 78(5) was leviable. After analysing the said section, this Court held that in the case of submission of false or forged documents/ declaration, the authority was entitled to presume the motive to mislead the authorities. However, in such cases that presumption was rebuttable by the assessee on producing the requisite documents referred to in Section 78(2)(a). That, once the ingredient of Section 78(5) stood established after giving a hearing, there was no discretion with the officer to reduce the amount of penalty or to waive the penalty. (Emphasis in original). If by mistake some of the documents were not readily available at the time of checking, principles of natural justice might require opportunity being given to produce the same. It was further held that under Section 78 (5) the legislature has fixed the rate of penalty and, therefore, the quantum of penalty could not be waived or reduced.

22. In the case of M/s. KMGS Road Signs Pvt. Ltd., New Delhi v. Commissioner, Commercial Taxes, U.P., Lucknow (supra) this Court has upheld the seizure of the goods on the ground that column Nos. 2, 3 and 6 of the declaration form were blank. According to learned single Judge, column Nos. 2, 3 and 6 are material columns should necessarily be filled. The learned single Judge has relied upon the decisions of the Apex Court in the case of Guljag Industries v. CTO (2007 AIR SCW 5044) (supra) and in the case of Assistant Commercial Tax Officer v. Bajaj Electricals Limited (2008 AIR SCW 8263) (supra). However, while dealing with the provision of Section 50 of the VAT Act, learned single Judge has observed as follows:

"The decision given in the case of Jain Shudh Vanaspati Ltd., Ghaziabad and others v. State of U.P. and others (1986 All LJ 595) (supra) should be understood in the light of the legal provision as it then stood. The legislatures have consciously amended law to plug the loophole of Section 28A for the purposes of preventing the evasion of tax. Whatever may be the legal position earlier, law as stands today, is clear and on a plain reading of Section 50 of the VAT Act, it cannot be possibly said that absence of Form 38 is immaterial."

23. Having regard to the aforesaid decisions, referred hereinabove, I am of the view that the Division Bench decision in the case of Jain Shudh Vanaspati Ltd., Ghaziabad and others v. State of U.P. and others (supra) still holds the field and is relevant for the interpretation of Section 50 of the VAT Act. The language of Section 28A(6) and 50(4) is synonymous. There is absolutely no difference in the language. Therefore, the interpretation of Section 28A read with Section 28(6) given by the Division Bench of this Court in the case of M/s Jain Shudh Vanaspati (supra) is applicable to the interpretation of Section 50 read with Section 50(4). Thus, for the detention/seizure of the goods under Section 50 read with Section

50 (4) and 50 (5), a case of an attempt to evade the tax and an attempt to evade assessment or payment of tax due or likely to be due under this Act has to be made out as a condition precedent. In this view of the matter the observation of the learned single Judge in the case of M/s. KMGS Road Signs Pvt. Ltd. is not correct in entirety and is to be read in the light of the observation made above.

24. Each case is to be examined on the fact of the case. Under Section 50 (1) and (2) read with Rules 54, 53(a) it is obligatory on the part of the importer to import the goods against the declaration form i.e. Form 38 accompanied by cash memo, bill, invoice or challan. The declaration form should be duly filled and signed by the purchaser and seller of the goods. Duly filled form is the requirement of Rule 54(3)(a). Therefore, unfilled form may lead to a violation of Section 50 (1) and (2) and Rule 54(3)(a) and Rule 55 (3). In case, if any discrepancy is being found, the officer is under obligation to issue show cause notice as provided under Rule 55(3) and in case the explanation is not found to be proper, he can pass the order seizing the goods under Rule 55(5). Rule 55(5) is to be read with Section 50(4) of the Act. It cannot be read in isolation. Therefore, for the seizure of the goods in case of any violation it is to be examined in each case that whether there was an attempt to evade assessment or payment of tax.

25. Admittedly, the goods sought to be imported in the present case are not goods named and described in ScheduleI. Therefore, provisions of Section 50 (1), (2), (3) and (4) and Rules 54 (3), 55 (3) and (5) apply whether the goods sought to be imported is for use as raw material and not for sale is wholly immaterial. The mandate of the provision is very clear. Section 50 of the Act applies to all goods except the goods named and described in ScheduleI. Therefore, the provision of Section 50 of the Act is applicable to the impugned goods. The allegation is that declaration form in Form 38 was not duly filled, as column No. 6 in which challan number or cash memo or invoice number should be filled, was blank unfilled.

26. Let us examine the fact of the present case. In the present case, admittedly column No. 6 of the declaration form was found unfilled, namely, bill, invoice and challan numbers were not mentioned. According to me, mentioning of challan, bill and invoice numbers in the declaration form is very material. By filling column No. 6 and mentioning invoice, bill or challan numbers the declaration form can be correlated with the goods covered by invoices or challan. Photostat copy of Form 38 has been produced before the Court during the course of hearing which is on record. Perusal of the said form reveals that all the columns have been filled except column No. 6. When the applicant was filling all the columns, there cannot be any plausible reason why he has left filling column No. 6. This act appears to be deliberate. Nonfilling of column No. 6 i.e. non mentioning of challan number or invoice number may lead to an inference that in case of nonchecking of goods, the said declaration form may be used for any other consignment of a similar quantity, quality, weight and value. In the

declaration form, some of the columns may not have that much importance, namely, that in case if the invoice number or challan number is mentioned in column No. 6 and the column of weight, quantity or value is unfilled, then one can verify from the invoice or the challan wherein all these details are mentioned. The circular of the Commissioner is also to this effect. The circular dated 322009, issued by the Commissioner, Trade Tax, referred by the learned counsel for the applicant, says that in case out of column Nos. 2 and 3, if one of the columns is not filled, the same may be got filled and the goods may not be seized. The circular does not say that in case if column No. 6 is not filled, the goods cannot be seized. Therefore, the applicant cannot get any benefit of the circular, inasmuch as that circular is not applicable to the present case.

27. Learned counsel for the applicant has cited the decisions of this Court in the case of M/s. Modi Rubber Ltd., Modi Nagar, Ghaziabad v. State of U.P. and others (supra) and in the case of M/s. Flosyn Fragrances, Noida v. Commissioner of Trade Tax, U.P., Lucknow, (supra). The decision in the case of M/s. Flosyn Fragrances, Noida relates to penalty and, therefore, it is not relevant at this stage. The stage of levy of penalty has not yet been arisen. The case of M/s. Modi Rubber Ltd. though relates to seizure of goods but is distinguishable on this facts of the case.

28. At this stage, it would be appropriate to consider one more aspect that now it is informed that most of the check posts established at the border areas have been abolished. When the check post was available importer had an opportunity to voluntarily submit the documents, disclosing the transaction to the check post officer even in the absence of full documents. In this circumstances, they could plead that there was no attempt to evade the tax but now this opportunity may not be available and whenever mobile squad authority will check the vehicle and goods in transit and on such checking if deficiencies are found and there is any contravention of provision the dealer and transporter may be subject to prove, the absence of intent to evade tax or assessment.

29. It may be mentioned here that in the present case documents have not submitted voluntarily at the check post, but have been submitted before the Mobile Squad Authority when the vehicle was checked.

30. In view of the above, prima facie, I am of the view that a case of seizure of goods has been made out. The seizure proceeding is only a summary proceeding. At this stage only the security has been demanded in respect of the penalty leviable in future for the release of the goods. It will be open to the applicant to take all the pleas during the course of penalty proceeding and it is expected from the authority concerned to consider such pleas without being prejudiced to the observations made in this order and the orders of the Tribunal and the authorities below and will conclude the penalty proceeding independently.

31. In the present case, Officer, Mobile Squad, has demanded Rs.52,12,500/ in cash which has been reduced by the Joint Commissioner (SIB) to Rs.11,12,000/

to which I do not see any reason to interfere.

32. In the result, revision fails and is dismissed.

Revision dismissed.

