
(2015) 05 RAJ CK 0224

In the Rajasthan High Court

Case No : . Sales Tax Revision No. 8 of 2003

Rameshwar Prasad Ram Prasad Trading Company	APPELLANT
Vs	
Assistant Commercial Taxes Officer, Flying Squad, Kota Division	RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Citation : (2015) 86 VST 328

Hon'ble Judges : J.K. Ranka, J.

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of R.B. Mathur, for the Appellant

Judgement

J.K. Ranka, J.—Instant sales tax revision petition is directed against order of the Tax Board dated January 17, 2002 and relates to penalty which was imposed upon the assessee under section 78(5) of the Act. It may be observed that a Larger Bench was constituted by the honourable the Chief Justice to resolve and decide the following questions framed after noticing a conflict of opinions in the Division Bench judgments of this court in Parasnath Granite India Ltd. Vs. State of Rajasthan and Another, , decided on June 2, 2004, and in Maharana Talkies v. State of Rajasthan (D.B. Civil Special Appeal No. 858 of 1994), reported in [2004] 19 Sales Tax Today 239 , decided on November 29, 2004, as well as Lalji Mulji Transport Company Vs. State of Rajasthan and Another, , as follows:

"(i) Whether requirement of mens rea is relevant for the purpose of determining the liability for penalty in terms of section 78, sub-section (5) of the Rajasthan Sales Tax Act, 1994?

(ii) Whether the mens rea is required to be proved as a necessary ingredient for imposition of penalty under sub-section (5) of section 78 on proven violation of sub-section (2) of section 78 of the Rajasthan Sales Tax Act, 1994?

(iii) Whether in view of the amendment to rule 55 of the Rajasthan Sales Tax Rules, 1995 pursuant to the decision of the honourable Supreme Court in the

case of State of Rajasthan and Another Vs. M/s D.P. Metals, , on sufficient cause being shown whether any authority empowered would be justified in not imposing the penalty in the absence of mens rea being proved?

(iv) Whether the mens rea is required to be proved as a necessary ingredient for imposing of penalty under sub-section (5) of section 78 on proved violation of sub-section (2) of section 78 of the Rajasthan Sales Tax Act, 1994?"

2. The Larger Bench of this court vide order dated February 26, 2015 passed in Sales Tax Revision Petition No. 92 of 1999 (Assistant Commercial Taxes Officer Vs. Indian Oil Corporation Ltd.-->) and other connected revision petitions has answered the questions as follows (pages 223 and 224 in 82 VST):

"(i) The requirement of mens rea is not relevant for the purpose of determining the liability for penalty, in terms of section 78(5) of the RST Act, 1994.

(ii) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of section 78, on proving violation of sub-section (2) of section 78 of the RST Act, 1994.

(iii) The amendment to rule 55 of the RST Rules, 1995, in pursuance of the decision of the honourable Supreme Court in State of Rajasthan and Another Vs. M/s D.P. Metals, , authorises the authority empowered, to make an enquiry of violation of section 78(2), and not to adjudicate as to whether the mens rea was present in violation of sub-section (2) of section 78, for imposing penalty under sub-section (5) of section 78 of the RST Act, 1994.

(iv) The mens rea is not required to be proved as necessary ingredient for imposition of penalty under sub-section (5) of section 78, on proving violation of sub-section (2) of section 78 of the RST Act, 1994."

3. After answering the questions in S.B. Sales Tax Revision No. 92 of 1999 in Assistant Commercial Taxes Officer Vs. Indian Oil Corporation Ltd.--> and other connected sales tax revisions, were ordered to be sent back and listed before the Bench having jurisdiction to decide the matters, in accordance with the opinion given and the answers provided by the Larger Bench on such opinion and accordingly the instant revision petition is being decided.

4. Brief facts, which can be noticed, are that the vehicle of the assessee, bearing No. RJ-14/G-7228 was intercepted on June 21, 1996 and after perusing the photo copy of bill No. 575 and bilty No. 182 dated June 21, 1996 and receipt of Krishi Upaj Mandi Samiti, Malpura, there was apprehension in the mind of the officers present that the documents are not correct or true. It was also noticed that the writing on the said two documents was different viz-a-viz even the photocopies were also different. Accordingly, a show-cause notice was issued and explanation was furnished but the assessing officer (for short, "the AO") was not satisfied with the explanation so offered and accordingly imposed penalty under section 78(5) at 20 per cent of the estimated value.

5. The matter was assailed by the assessee before the Deputy Commissioner (Appeals) (for short, "the DC (A)") who allowed the appeal and deleted the penalty, however, on further appeal by the Revenue, the Tax Board reversed the order of the DC (A) and upheld the penalty.

6. Instant petition was filed by Shri R.B. Mathur on behalf of the petitioner-assessee, however, he became standing counsel for the revenue long back and during the last so many years, no effective steps have been taken by Mr. R.B. Mathur or the assessee to make alternative arrangements. The matter was lastly listed on May 26, 2015 and on which date Ms. Tanvi Sahai, appearing on behalf of Mr. R.B. Mathur, sought short-time for making alternative arrangements but today she pleads no instructions. Even before the Larger Bench Mr. R.B. Mathur appeared and argued the matter and did not point this fact. Since the matter pertains to the year 2003 and penalty imposed in the year 1996 and now in the light of the judgment rendered by the Larger Bench of this court in the case of Assistant Commercial Taxes Officer v. Indian Oil Corporation Ltd. [2015] 82 VST 200 (Raj) [FB], the matter is disposed of accordingly after perusing the material available on record.

7. In the light of the judgment of the Larger Bench in the case of Assistant Commercial Taxes Officer v. Indian Oil Corporation Ltd. [2015] 82 VST 200 (Raj) [FB] and of the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, , mens rea is not essential.

8. It has been noticed by the Tax Board that there were several discrepancies noticed in the documents produced by the vehicle in-charge at the time of interception. It has been observed by the Tax Board that the documents, namely, bill was prepared later on after the vehicle was intercepted and clear-cut case has been made out by the Tax Board which is a finding of fact recorded by it that the bill, which was produced at the time of interception and the bill, which was later on produced, was quite different and had variance and it was further noticed that it was not verifiable even from the records maintained by the assessee and produced before the AO. The Tax Board has also reproduced the version of Kailash Chand who stated as under:

9. There is a finding of fact by the Tax Board that the photocopies were merely kept to keep the officers of Revenue in dark, as original bill book was blank and entries could be made as per choice and convenience and further these can be categorized in the category of false and forged and it is a clear-cut case of evasion of tax.

10. Therefore, once there is a clear-cut admission by the assessee himself that the bill was prepared later on and in my view as well, there is no case made out by the assessee and it was a clear-cut case of evasion of tax and the penalty has been rightly imposed by the AO and sustained by the Tax Board. Judgment of the honourable apex court in the case of Guljag Industries Vs. Commercial Taxes Officer, , is also squarely applicable in the instant case.

11. Consequently, the question of law is answered in favour of the Revenue and against the assessee. A copy of this order be sent to the assessee for information.