**(2013) 09 RAJ CK 0059**

**In the Rajasthan High Court**

**Case No :** Sales Tax Revision Petition No. 241 of 2009

Santosh Steel APPELLANT

Vs

Assistant Commercial Taxes Officer RESPONDENT

**Date of Decision :** 13-09-2013

**Acts Referred:**

**Citation :** (2013) 66 VST 397

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

**Bench :** Single Bench

**Advocate :** T.C. Jain, for the Appellant; R.B. Mathur with Ms. Tanvi Sahai, for the Respondent

## Judgement

J.K. Ranka, J.—The instant sales tax revision petition, u/s 84 of the Rajasthan Value Added Tax Act, 2003 (in short, "the VAT") has been filed by the petitioner-assessee, assailing the order passed by the Rajasthan Tax Board, Ajmer (in short, "the Tax Board") dated October 21, 2009 in Appeal No. 1142 of 2008, whereby it accepted the appeal filed by the petitioner-Department by upholding the order of imposition of penalty u/s 76(6) of the VAT Act, passed by the learned assessing officer and reversed the order passed by the learned Deputy Commissioner (Appeals), Commercial Taxes Department, Bharatpur, (in short, "the DC(A)"), dated October 17, 2007 who had quashed and set aside the order of penalty passed by the learned ACTO (FS), (in short, "the ACTO"). The brief facts as emerging on the face of the record is that a vehicle bearing No. HR-12-GA-0425 was intercepted by the ACTO (FS), Alwar of the respondent-Department on Behror Tatarpur Road on March 27, 2007. In the said vehicle, the ACTO found "iron girders" which were being transported from Hisar to Kishangarhbas. However, on verification from the Driver, Deepak Kumar, he produced a bill No. 15 dated March 27, 2007 of M/s. Santosh Steels, Kathuwas, Alwar and Builty No. 181 issued by Deepak Road Lines, Near Hanuman Mandir, Satrod Khurd, Hisar (Haryana) wherein the date has been mentioned as February 12, 2007 and against the name of the sender of the goods, it is mentioned as "Jindal". It bears

FGL No. T 1406941512725. Since, there were contradictions in the statement of the truck driver viz-?-viz, the bill and builty number, the vehicle was detained by the ACTO and a show-cause notice dated March 27, 2007 was issued for hearing on April 11, 2007. It was also noticed by the ACTO that the vehicle did not stop at the check-post. In response to the notice, one Bramh Prakash Agarwal appeared on March 27, 2007 itself and submitted an application and confirmed that he has received the notice and that he is unable to produce the books of accounts as also the declaration form No. ST-18A and other record on account of the fact that the accountant of the firm is out of town. He further submitted that as he has to deliver the goods urgently, the order may be passed today itself, and that he is ready to pay/deposit the amount of penalty then and there. He claimed to have filed reply on behalf of the petitioner. Since, the representative of the petitioner-firm has agreed for passing of the order then and there though time of about two weeks was granted and depositing the amount of penalty then and there, the respondent-Department was having no option except to consider the reply and to impose the penalty. Accordingly, the penalty as aforesaid was imposed u/s 76(6) being 30 per cent of the value of the goods at Rs. 92,670 by holding that there is violation of provisions of section 76(2)(a) of the VAT Act.

2. Dissatisfied with the order passed by the ACTO (FS), the petitioner-assessee, filed an appeal before the DC(A), Bharatpur, who after going through the material on record as well as the order passed by the ACTO (FS), vide order dated October 17, 2007 deleted penalty by accepting the contentions of the petitioner-appellant.

3. Being aggrieved with the said order of DC(A), the respondent-Department, filed an appeal before the Tax Board, who after going through the entire record and after perusing the order of learned ACTO as well as of DC(A), reversed the order of learned DC(A) and sustained the order of penalty passed by the ACTO u/s 76(6) of the VAT Act.

4. Hence, this revision petition.

5. T.C. Jain, learned senior counsel appearing on behalf of the petitioner-assessee, submitted that no show-cause notice was issued to the petitioner-assessee. He further submits that one Bramh Prakash Agarwal appeared, who was not an authorized representative of the petitioner-assessee. He further submitted that there was no occasion for Bramh Prakash, who was unknown to have come forward to appear on behalf of the petitioner when he was not authorized by the petitioner-assessee. He further submitted that the bill was genuine and the ACTO ought to have made further enquiry from the purchaser as well as from the seller and should not have straight away imposed the penalty then and there. He placed reliance on the judgment of this court rendered in the case of Assistant Commercial Taxes Officer v. Kishori Shyam Brijesh Kumar [1994] 93 STC 213 (Raj), Assistant Commercial Taxes Officer, Kota v. Associated Steel industries, Kota [2006] 15 Tax Up-Date 169.

 

6. The learned counsel for the petitioner further submitted that the penalty has wrongly been imposed upon the petitioner-assessee and deserves to be deleted. He further submitted that as to how, it has been observed that the goods were coming from Hisar to Kishangarhbas, Alwar when the bill was issued by the petitioner having its business at Kathuwas, Alwar for being transmitted to one Rajasthan Hardware Store, Kishangarhbas. He further submitted that the bill is quite genuine and contents of the bill could not have been doubted at all by the respondent-Department. Accordingly, merely on assumption or presumption no penalty could be levied.

7. On the other hand, Mr. R.B. Mathur, assisted by Ms. Tanvi Sahai, learned counsel appearing for the respondent-Department, submitted that the ACTO as well as the Tax Board, is quite justified in imposing/sustaining the penalty and it is a clear-cut case where the entire evidence is against the petitioner-assessee. He further submitted that since, there was contradiction in the version given by the truck driver Deepak Kumar viz-?-viz the alleged bill and builty found and subsequently it was not proved by the petitioner-assessee about its correctness, therefore, the penalty has rightly been imposed. He further submitted that Bramh Prakash gave appearance on behalf of the petitioner-assessee and since, the notice was sent to petitioner-assessee, Santosh Steels, kathuwas, Alwar, for hearing on April 11, 2007 requiring the petitioner to produce his books of accounts, bill books, declaration form No. ST-18A, purchase voucher, etc., however, at the behest of Santosh Steels, one Bramh Prakash appeared and filed reply and submitted that he is unable to produce books of accounts and that an order be passed then and there. He further submitted that if Bramh Prakash was the transporter then as argued by Mr. Jain, senior counsel appearing on behalf of the petitioner-assessee that he could not have claimed about non-production of books of accounts of his firm and he categorically stated in the reply filed on March 27, 2007 that he is unable to produce the books of accounts of his firm as the accountant was out of town. He further submitted that burden was on the petitioner-assessee to discharge by way of production of books of accounts and other supporting material to which he utterly failed and since the representative rightly or wrongly without any request about production of books of accounts on a subsequent date on account of accountant not being in town requested rather insisted for passing an order and even conveyed to the ACTO that he is ready and willing to deposit the amount of penalty then and there though sufficient time was granted. He further submitted that had Bramh Prakash been a transporter he would not have stated about deposit of penalty then and there, for a transporter cannot have capacity to deposit the penalty of such magnitude and that he was acting on behalf of/behest of the petitioner. He further submitted that it is a finding of fact and no question of law arises and therefore, the instant revision petition should be dismissed.

8. I have considered the arguments advanced by the learned counsel for the parties, perused the impugned orders passed by the Tax Board and the DC(A) as also the judgments cited at bar. I have also perused the record of the assessing

 

officer which was summoned for ascertaining and perusal of the facts. It would be appropriate to quote section 76(6) of the VAT Act, which reads as under:

76. (6) The incharge of the check-post or barrier or the officer empowered under sub-section (4) after having given the owner of the goods or person duly authorized in writing by such owner or 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 sub-section (2) or for submission of false or forged documents or declaration, a penalty equal to thirty per cent of the value of such goods.

9. On perusal of the same, it transpires that a reasonable opportunity has to be granted to the owner or a person duly authorized by such owner or the driver or the person incharge of the vehicle or carrier.

10. In the instant case, Bramh Prakash appears on behalf of the petitioner-assessee and requested for passing of order then and there. Though, Mr. Jain, learned counsel appearing on behalf of the petitioner, vehemently argued that Bramh Prakash was an outsider and was not the representative of the petitioner but a bare perusal of the para 5 of the brief facts of the case submitted by the petitioner in the present revision petition proves contrary to what has been argued by learned counsel for the petitioner. For ready reference para 5 of the brief facts of the instant revision petition is quoted hereunder:

That in response to show-cause notice the petitioner''s representative Shri Brahma Prakash Agarwal appeared and filed reply. It was further explained that since Munim of the firm is out of station, the books of account could not be produced but issue of invoice, etc., was admitted and fact was owned by the petitioner.

11. It is clear even by the brief facts as given by the petitioner that Brahma Prakash has been claimed by the petitioner himself, in the revision petition as "petitioner''s representative" and he appeared and filed reply on behalf of the petitioner, in my view, the arguments advanced by the learned counsel for the petitioner cannot be accepted at all as they are contrary to the facts averred in the instant petition vis-?-vis the argument. Even otherwise, had Brahma Prakash Agarwal been a transporter, he could not have appeared and stated that he is unable to produce the books of accounts of the firm as the accountant was out of town. The respondent ACTO granted sufficient time of appearance and hearing on April 11, 2007 vide notice dated March 27, 2007 of more than weeks but the representative of the petitioner for the reasons best known requested to pass penalty order then and there. According to me the ACTO respondent had no option except to impose the penalty when the requirements were not complied with. What further enquiry was required to be made when petitioner did not want to avail of reasonable opportunity granted by the ACTO even for producing the books of accounts and supporting material.

 

12. Further it is apparent on perusal of builty that the builty refers the name of sender "Jindal" and issued by Deepak Road Lines, Hissar, Haryana and the observations of the ACTO appears to be correct that the goods were transmitted from the factory of Jindal industries from Hissar to Kishangarhbas. Neither the petitioner submitted any clarification or certificate or affidavit from the so-called "Jindal" as to non-remittance of the goods from their factory to Kishangarhbas, on the contrary even the driver Deepak Kumar stated this fact before the ACTO that the vehicle was having "loha girders" which was loaded from the factory of Jindal Rolling Mills, Hissar at 4 p.m. and was going to Kishangarhbas from Hissar. In the light of these facts, no clarification or further claim was or even reply was filed by the petitioner-assessee before none of the authorities denying these facts.

13. The judgments relied upon by the learned counsel for the petitioner-assessee, according to me are distinguishable inasmuch as the case of Assistant Commercial Taxes Officer v. Kishori Shyam Brijesh Kumar [1994] 93 STC 213 (Raj). In that case, this court came to the conclusion that merely on the basis of the statement made by the dealer, it could not be considered to be an admission at all since, the basic requirement of law had not been complied with and until and unless a clear finding is given after examining the books of accounts or other documents, whereas in the present case, even the petitioner had failed to produce the books of accounts and other supporting material respite ample opportunity having been granted and there was no occasion for the ACTO to have examined the books of accounts, in the case of Associated Steel Industries, Kota [2006] 15 Tax Up-Date 169 merely on the basis of statement of the driver, the finding could not have been against the petitioner-assessee. In my view, there can be no doubt about this fact and placing reliance solely, on the statement of driver no adverse inference could have been drawn but in the instant case, even the authorized representative of the petitioner submitted that he is unable to produce the books of accounts and other supporting material as well as the declaration form ST-18A and requested for passing an order then and there despite of time having been granted by the ACTO. Not only this, no reply nor any explanation or even clarification was submitted on behalf of the assessee-petitioner on records to refute the allegations/observations of the assessing officer. Therefore, in my view, the authorities cited by the learned counsel for the petitioner-assessee are distinguishable to the facts of the present case. In my view, burden lay on the petitioner which has not been discharged. The finding arrived at by the Tax Board, is a finding of fact in the light of the facts narrated hereinabove. Consequently, I do not find any illegality, irregularity or impropriety in the order passed by the Tax Board. No question of law arises in this petition. The sales tax revision petition stands dismissed in limine.

 