(2014) 08 RAJ CK 0075

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 212/2012

Videocon Industries Ltd. APPELLANT

Vs

The Asstt. Commercial Taxes Officer RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : (2014) 76 VST 286

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sanjay Verma, Advocate for the Appellant

Judgement

Alok Sharma, J.—A challenge has been made to the order dated 13-7-2012, passed by Rajasthan Tax Board, Ajmer (hereinafter ''the Board''), sustaining the order dated 20-10-2009 passed by Deputy Commissioner (Appeals) confirming the order dated 17-8-2001 visiting the petitioner company with liability in a sum of Rs. 3,85,190/- as penalty u/s 78(5) of the Rajasthan Sales Tax Act, 1994 (herein after to be referred ''1994 Act'').

2. The facts of the case are that ACTO Flying Squad Nimbahera intercepted truck No. HR-46/3642 on 1-8-2001 at Nimbahera in Chittorgarh District, Rajasthan on its way from Aurangabad to Jaipur wherein 174 colour televisions were being transported to the petitioner''s branch office at Jaipur. On checking of the documents required to accompany the goods in transit u/s 78(2) of the 1994 Act, it was found that though the goods in issue were accompanied by a challan invoice issued on 29-7-2001 valued at Rs. 12,83,939/-, loading slip No. 2531 dated 28-7-2001 and GR No. 358 dated 30-7-2001, the declaration form ST18A was found missing. The truck driver in his statement before the Assessing Officer apparently stated that he had not received form ST-18-A when the goods were despatched from Aurangabad. In the circumstances, a show cause notice was issued to petitioner company prima facie finding a contravention of Section 78(2) of the 1994 Act read with Rule 53(1) (a)(ii) of the Rules. Reply to notice along with declaration form ST-18-A bearing No. 22164/16 was filed by the petitioner

company. It was also stated in the alternative that the goods were under branch transfer from the petitioner company''s factory to its branch office at Jaipur and hence in any event the declaration form ST-18-A was not required to accompany the goods in transit in any way as in the context of transaction no evasion of tax was conceivable. It was prayed that in the circumstances show cause notice for levy of penalty be dropped. The assessing officer however concluded that from the statement of the driver of the truck No. HR-46/3642 as also the transport company''s letter it was apparent that the petitioner company had not at all handed over the declaration form ST-18-A to the transporter at Aurangabad and its defence that form ST-18-A in fact had been submitted but accidentally left by the driver was false. Holding that submission of declaration form ST-18-A with the reply to the show cause notice by the petitioner company was only a cover up of the company''s intent to evade tax, the Assessing Officer held the company liable and visited it with penalty of Rs. 3,85,190/- u/s 78(5) of the 1994 Act. The order passed by the assessing officer was sustained both by the appellate authority as also the tax Board. Hence this revision petition.

3. Mr. Sanjay Verma, officer of the petitioner company appearing on its behalf, owing to Advocate''s strike submits that the judgment of the assessing officer upheld by the appellate authority and the Tax Board is contrary to the judgment of the Hon''ble Supreme Court in the case of State of Rajasthan and Another Vs. M/s D.P. Metals, wherein the Hon''ble Supreme Court has held that if by mistake some of the documents required u/s 78(2) of the 1994 Act are not readily available at the time of checking of the goods in transit, principles of natural justice would require an opportunity to the assessee to produce the same. And on submission of such documents, if not forged or fabricated, penalty cannot be levied. He submits that the judgment of the Hon''ble Supreme Court in the case of D.P. Metals (supra) has been since followed consistently in various judgments such as ACTO Vs. Lloyd Electric & Engg. Ltd. [2011-15 VAT Reporter 40 (HC)], ACTO Vs. Kiran Global Cams Piplag [2011-16 VAT Reporter 225 (HC)], Cera Tech India Vs. ACTO [2013-35 Tax Update 49 (HC)], ACTO Vs. Tata Iron Steel Co. Ltd. [2013-35 Tax Update 249 (HC)]. He submits that the Tax Board has inexplicably and wrongly construed the judgment of the Hon''ble Supreme Court in the case of D.P. Metals (supra) in holding that non-accompaniment of requisite declaration form ST-18-A with the goods in transit was rectifiable only when it was for reasons of human error. Only then subsequent submission could absolve the assessee. But where intent to evade tax was discernible, penalty could be levied in spite of submission of declaration form ST-18-A with the reply by the assessee held the Tax Board. He has further submitted that the petitioner assessee had filed its reply to show cause notice asserting that its Aurangabad office had indeed sent the declaration form ST-18-A to the transporter, yet the say of the assessee was overlooked without any good cause on the ipse dixit of the Assessing Officer arbitrarily accepting the version of the driver of the truck/ transporter without any opportunity of their cross examination or an enquiry in this regard. He further submits that in any event a reading of the judgment in

D.P. Metals (supra) would indicate that the cause of the error where requisite documents were not found in the first instance accompanying the goods in transit is not relevant and if any document including the declaration form ST-18-A was supplied with the reply to show cause notice, penalty u/s 78(5) of the 1994 Act cannot be levied. The representative of the petitioner company then pointed out that it is not in dispute that goods in transit were in the course of branch transfer without any tax liability and hence in any event no tax evasion could be attributable to the petitioner company warranting levy of penalty u/s 78(5) of the 1994 Act.

4. Heard. Considered.

5. The ratio of the judgment in the case of D.P. Metals (supra) is clear. It is that where goods in transit are found to be unaccompanied by any material document required u/s 78(2) of the 1994 Act, on show cause notice being issued in respect therefor if such document is supplied filling up the lacuna, no penalty would be leviable. The Hon''ble Supreme Court has not defined the nature of mistake which alone would be rectifiable by submitting the required documents with the reply to show cause notice. As long as the missing document, in this case as the declaration form ST-18-A, was furnished with the reply to show cause notice, it ought to have sufficed. Aside of aforesaid, it is not in dispute that the goods in transit were in the course of stock transfer from petitioner''s factory at Aurangabad to its branch at Jaipur and a case of tax evasion could not be made out. The Assessing Officer or for that matter the Appellate Authority and the Tax Board have not held that the goods were not being transported under a branch transfer and have yet based their judgment on a purported intent to evade tax. The allegation of intent to evade tax was palpably facetious, the declaration in form ST-18-A having been submitted with the reply.

6. In the circumstances obtaining, in my considered opinion the order dated 13-7-2012 passed by the Tax Board upholding the order of the appellate authority and assessing officer levying penalty u/s 78(5) of the 1994 Act is liable to be set aside. It is accordingly directed.

7. Accordingly, the revision petition is allowed.

