

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.835 of 2015

M/s Ceat Ltd. a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 463, Dr. Annie Besant Road, Worli, Mumbai and Branch Office at Simli Murarpur, Sabalpur, P.S.A. Didarganj, District Patna through its Authorized Representative Amresh Bahadur Agrawal, son of Late Narendra Bhup Bahadur, Resident of 404-B, Mahalaxmi Apartment, East Boring Canal Road, P.S. Budha Colony, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes, Integrated Check Post, Dobhi, District Gaya.
3. The Assistant Commissioner of Commercial Taxes, Integrated Check Post, Dobhi, District Gaya.
4. The Commercial Taxes Officer, Integrated Check Post, Dobhi, District Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S. D. Sanjay, Senior Advocate
Mrs. Parul Prasad, Advocate
Mrs. Priya Gupta, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-11-2023

The petitioner engaged in the manufacture and sale of tyres, tubes and flaps is concerned with a penalty order passed under Section 60(4) (b) read with Section 56(4) (b) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') after detention of a truck carrying goods at the integrated check-post, Dhobi, Gaya.



2. The petitioner has a mother Warehouse situated at Patna and other branch Warehouses in the nearby State, one of which is situated at Ranchi in the State of Jharkhand. The contention is that by invoice produced at Annexure-1, stock transfer was made to the Warehouse at Ranchi and while the same was being transported in a vehicle as per the lorry receipt produced at Annexure-1/A, the same was detained and checked at the integrated check-post. The driver of the truck produced Annexure-1, 1/A and Annexure-2 SUVIDHA Outgoing Form which had to be uploaded before the transport originated and the same produced on probable checking. The SUVIDHA Form at Annexure-2 had a different invoice number from that shown in Annexure-1. The value and the quantity tallied with the invoice, but the invoice number was wrongly noticed as 002179; which was actually 002172. This was just a clerical mistake is the contention. The detaining authority, however, rejected the contention of the petitioner and imposed penalty, as per the impugned order at the maximum prescribed under Section 60(4) of the Act.

3. The learned Senior Counsel submits that there can be no *mens rea* found especially when everything tallied but the invoice number, which mistake was also due to a human error



which had to be reckoned by the detaining authority. It is pointed out that while transporting goods inter-State, in the present case, between the States of Bihar and Jharkhand, SUVIDHA Forms had to be uploaded before the transportation commenced. While in the portal of the State of Bihar, the SUVIDHA Form at Annexure-2 was uploaded; with a mistake in invoice number, it was correctly done in the portal of the State of Jharkhand as revealed from SUGAM-G form as indicated in Annexure-2/A. It is also pointed out that there is yet another invoice as per Annexure-3 having document number 002179 produced as Annexure-3 which is dated 02.01.2015. The supporting documents of which are produced along with Annexure-3. It is argued that there can be no penalty imposed and in any event, not at the maximum of that prescribed, especially since it has been held in various decisions that insofar as penalty is concerned, the word '*shall*' used in the provision could, in the peculiar facts and circumstances, be deemed to be '*may*'. The learned senior counsel would also contend that there is no question of tax evasion since the goods were stock transferred and it was not intended for sale within the State of Bihar or for inter-State sale.

4. The learned Government Advocate, on the other



hand, would rely on *Guljag Industries v. Commercial Taxes Officer, (2007) 7 SCC 269*. It is argued that what comes out from the provision is a penalty for misdemeanor with civil liability and not necessarily one which is attracted only when there is *mens rea* and the intention is also not merely of deterrence. The learned Government Advocate points out that the invoice now produced with the number 002179 is one which was generated on the next day after the detention had occurred. The detention as is seen from Annexure-4 series was on 02.01.2015 at 01.05 a.m. at the integrated check post, Gaya. Subsequently generated document cannot prove the genuineness of the transport and the wrong invoice number noticed could very well have led to multiple transport being carried out on the basis of the stock transfer invoice, which could really be an inter-State sale. If the vehicle was not detained and not searched, then there could have been further transport carried out based on the very same quantity and value, thus, enabling the present consignment which was detained, to be sold inter-State, thus, raising a reasonable ground of attempt to evade tax.

5. We cannot but notice that the documents produced by the petitioner does not prove the genuineness of the transport as has been contended by the learned Government Advocate.



The detention was in the early hours of 02.01.2015 and the invoice generated as Annexure-3 series with the supporting documents were generated after the detention; definitely on coming to know of the detention at the check-post and the mistake in invoice number as revealed from the SUVIDHA Form having been noticed by the Check-Post Authority. The invoices are serially numbered and there is no evidence to show the last serial number of the invoice on the day on which the transport commenced. The identity in value is evident from the invoice and the SUVIDHA Form, but, however, the quantity as noticed in the notice is handwritten and not by the authorized signatory.

6. Determining whether there shall be always a *mens rea* for imposition of penalty, ***Guljag Industries (supra)*** is very relevant. We specifically extract paragraphs 29, 31, 32 and 33 of the above decision:-

“29. It has been repeatedly argued before us that apart from the declaration forms the assessee possessed documentary evidence like invoice, books of accounts, etc. to support the movement of goods and, therefore, it was open to the assessee 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 ST 18-A/18-C duly filled in. It is Section 78(2)(a) which has been contravened in the present case by the assessee by carrying the goods with blank forms though signed by the consignee. In



fact, the assessees resorted to the above modus operandi to hoodwink the competent officer at the check-post. 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 AO 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 being taxed 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 ST 18-A/18-C even in respect of goods in movement under inter-State 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 inter-State 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.

31. We may mention some of the judgments cited on behalf of the assessees. Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 came for interpretation before this Court in Sodhi Transport Co. v. State of U.P. [(1986) 2 SCC 486 : 1986 SCC (Tax) 410 : (1986) 1 SCR 939] In that case the constitutional validity of Section 28-B of the said Act was challenged. It was held by this Court that since Section 28-B created rebuttable presumption as regards the proof of a set of circumstances, the effect of such a provision was to shift the burden of proving to the assessee who was given an opportunity to displace the presumption by leading evidence. This judgment has no application because the very words contained in Section 28-B required the authorities to raise a rebuttable presumption that the goods must have been sold in the State if the transit pass was not handed over at the check-post. In the present case, we are not concerned with the transit pass. In the present case, there are no words in Section 78(5) similar to Section 28-B of the Uttar Pradesh Sales



Tax Act, 1948 which states that if the transit pass was not handed over to the officer at the check-post, the Department would be entitled to raise the presumption that the goods in transit were sold in the State. As stated hereinabove, we have to go by the words used in the section to ascertain whether the legislature has excluded the element of mens rea. It is the statutory law enacted by the competent legislature which can exclude the presumption under common law. We hold that Section 78(5) excludes the presumption of mens rea which is normally prevailing in common law. Our reasoning is also based on one more factor, namely, that Section 78(5) provides a remedy for recovery of the loss caused to the State by such contravention.

32. In the present case, the assesseees have relied upon the judgment of this Court in State of Rajasthan v. D.P. Metals [(2002) 1 SCC 279]. In that case the facts were as follows: The assessee firm manufactured stainless steel sheets. The assessee was a registered dealer. On 22-1-1997 a truck was inspected by CTO. The same was found without Form ST 18-A. 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 non-compliance 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. 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.

33. In our view, the aforesaid judgment in D.P. Metals [(2002) 1 SCC 279] has no application to the present case. We are not concerned in the present case with false or forged documents/declaration. In the



present case the goods in movement were carried with the blank declaration Form ST 18-A/18-C which was duly signed by the assessee. Therefore, as stated above, we hold that the goods in movement were carried without the declaration Form ST 18-A/18-C. Therefore, Section 78(2)(a) stood attracted. Moreover, in the present case, there were no special circumstances indicated by the assessee as to why the forms which were duly signed were not filled in. Therefore, in our view the above judgment in D.P. Metals [(2002) 1 SCC 279] has no application to the facts of the present case. As stated, we are concerned with the blank declaration Form ST 18-A/18-C which has travelled with the goods in movement, though signed, was left deliberately blank. The declaration Form ST 18-A/18-C is like a return under the Income Tax Act, 1961. The assessing officer completes the assessment on the basis of Form ST 18-A/18-C. If that form is left blank in all material respects then it is impossible for the AO to arrive at the taxable turnover of the assessee. Therefore, in our view, the judgment of this Court in D.P. Metals [(2002) 1 SCC 279] has no application to the present case.

7. It has been categorically held that Section 78 (2), the contravention of which was the controversy in the cited decision results in a civil liability and even if the goods are exempt from taxation, if the transportation is not supported by requisite declaration, then there is no question of a presumption of *mens rea* preceding the imposition of penalty. The Hon'ble Supreme Court also drew a distinction between a blank/incomplete form accompanying the transport and the total absence of the declaration form, on detention. In the former case of a form being left incomplete and the description of the goods not being given, then it would be impossible for the assessing authority to assess the taxable goods and in such cases merely



because the alleged transaction is not taxable, it cannot be said that the penalty cannot be imposed.

8. The Hon'ble Supreme Court had also referred to *State of Rajasthan v. D.P. Metals (2002) 1 SCC 279* to distinguish the same from the facts of *Guljag Industries (supra)*. While in *Guljag Industries (supra)*, goods were being carried with blank declaration form which raises a good ground for finding attempt to evade tax, in *D. P. Metals (supra)*, the goods were carried without the declaration form. In *D. P. Metals (supra)* it was held that Section 78 had two ingredients to attract penalty; one the absence of a declaration form and the other production of forged or false declaration. It was held that the presumption was rebuttable on the assessee producing the requisite documents, if by mistake some of the documents were not readily available at the time of checking. It was also held that once the ingredient of Section 78 (5) is established after an opportunity was afforded for hearing, then there is no question of reducing the amount of penalty or waiving it.

9. The facts in the aforesaid case has to be looked at with the declaration of law in *Guljag Industries (supra)* and *D. P. Metals (supra)*, in mind. In the present case, there was a mistake in the invoice number as indicated in the declaration



form which was accompanying the transport. A reasonable ground of attempt to carry out multiple transport arise, since if there was no checking at the check-post then there could have been a further transport made under the same invoice, thus, enabling an inter-State sale of the goods transported by the subject invoice and SUVIDHA Form, which could go unnoticed by the Department. Section 60(4) enables a seizure of goods along with the carrier if the authority suspects the transport to be in contravention of the provisions of Section 60(2). Section 60(4) (b) makes Section 56 applicable *mutatis mutandis*. Penalty is imposable under Section 56(4) (b) if the person in charge of the goods fails to satisfy the officer regarding the proper accounting of goods. The ingredients of Section 60(4) (b) read with Section 56(4) (b) are available in the instant case.

10. We find absolutely no reason to interfere with the penalty imposed. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sunil/-

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