

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Sales Tax (VAT) Revision Petition No. 315/2017

Assistant Commissioner, Commercial Taxes, Circle-A, Bharatpur
Rajasthan.

-----Petitioner

Versus

M/s C.P. Agro Industries, Roopwas, Bharatpur, Rajasthan.

-----Respondent

For Petitioner(s) : Mr. Punit Singhvi with
Mr. Ayush Singh through VC
For Respondent(s) : Mr. Anurag Kalavatiya through VC

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

Judgment

04/02/2022

Reportable

Judgment reserved on :- 04/02/2022

Date of Pronouncement:- Feb. ,2022

(PER HON'BLE ANOOP KUMAR DHAND,J)

1. A challenge in the instant petition filed by the petitioner-Assistant Commissioner, Commercial Taxes under Section 84 of the Rajasthan Value Added Tax Act, 2003 (for short 'the RVAT Act, 2003') read with Section 86 of the Rajasthan Sales Tax Act, 1994 has been made to the order dated 09.05.2017 passed by the Rajasthan Tax Board, Ajmer [for short 'the Tax Board'] in appeal No. 1403/2011/Bharatpur whereby the Tax Board while allowing the appeal filed by the respondent - assessee (hereinafter referred as 'the assessee') set aside the penalty imposed under Section 61 of the RVAT Act, 2003.

2. The issue involved in this petition is 'Whether the Rajasthan Tax Board has committed an error of law in setting aside the order of imposition of penalty despite the fact that the tax and interest imposed by the petitioner- Assistant Commissioner Commercial Tax has been upheld and the Form-C was found to be fake and forged?'

3. Brief facts of the case are that the assessee is engaged in the business of mustard oil. It was found by the Assessing Officer that the assessee sold mustard oil against declaration Form-C to the firms of Bihar. The assessee also claimed the refund as contemplated under Section 17(2) of the RVAT Act, 2003. During the course of inquiry, it was found that the declaration Form-C which was submitted by the assessee, was fake and forged and it was also found that a racket was using false, fake and forged declaration forms. A massive inquiry was conducted of various assessees and an opportunity of hearing was given to the respondent- assessee to show cause as to why tax, interest and penalty under Section 61 of the RVAT Act, 2003 be not imposed upon him. The assessee submitted its reply which was considered by the Assessing Officer and after considering the documents available on record, the Assessing Officer imposed tax, interest and penalty under Section 61 of the Act in the assessment order passed under Section 9 of the C.S.T. Act read with Sections 24, 55 and 61 of the RVAT Act, 2003 vide order dated 31.03.2010.

4. Aggrieved and dissatisfied with the aforesaid order, the assessee filed an appeal under Section 82 of the RVAT Act, 2003 before the Deputy Commissioner (Appeals) Commercial Tax Department, Bharatpur (Raj.), who vide its order dated

11.02.2011 while dismissing the appeal, upheld the order dated 31.03.2010 passed by the Assistant Commissioner.

5. The assessee aggrieved and dissatisfied with both the orders dated 31.03.2010 and 11.02.2011, filed an appeal before the Rajasthan Tax Board, Ajmer, who, while partly allowing the appeal, upheld the order of imposition of tax and interest, but set aside the order of penalty imposed upon the assessee under Section 61 of the RVAT Act, 2003.

6. The petitioner-Assistant Commissioner aggrieved with the order dated 09.05.2017 passed by the Tax Board, has preferred the instant petition before this Court.

7. Learned counsel for the petitioner - Assistant Commissioner, submitted that the Tax Board without recording any findings, upheld the findings recorded by the Assessing Authority which was approved by the Deputy Commissioner and set aside the order of penalty imposed upon the assessee under Section 61 of the RVAT Act, 2003, vide order dated 09.05.2017. Counsel submitted that after thorough inquiry it was proved before the Assessing Authority and the Deputy Commissioner that the Form-C was found to be forged and fake and the Assessee was held liable to pay tax, interest and penalty. Thus, there was no occasion available with the Tax Board to set aside the penalty imposed upon the Assessee. Lastly, counsel argued that the order dated 09.05.2017 passed by the Tax Board warrants interference of this Court.

8. E-Converso, the learned counsel appearing for the respondent submitted that the goods were purchased by the Assessee from the businessmen of other States and the Assessee was not aware that the Forms-C were bogus, fabricated and fake.

Hence, the Assessee cannot be held liable to pay any kind of penalty. Lastly, counsel submitted that the Tax Board has not committed any illegality in passing the order dated 09.05.2017 and the Tax Board has rightly set aside the aforesaid penalty.

In support of his submissions, learned counsel has placed reliance upon the following Judgments:-

1. Appeal No.720/2011/Bharatpur, Tata Shree Bhagawati Oil Industries, Bharatpur v. Commercial Taxes Officer, Antivision, Bharatpur & Other connected appeals, decided on 25.06.2015 by the Division Bench of Rajasthan Tax Board, Ajmer; and

2. S.B. Civil Sales Tax Revision No.1276/02, C.T.O., Jodhpur v. M/s. Kohinoor Industries, Jodhpur, decided on 03.05.2007 by the learned Single Judge at Principal Seat, Jodhpur.

9. Heard learned counsel for the parties and perused the record.

10. After recording the concurrent findings, the Assessing Officer and both the Appellate Courts have found that Forms-C submitted by the Assessee were not genuine. Even then the Tax Board has exonerated the assessee from payment of penalty.

11. The Assessee has miserably failed to prove before all the Authorities that he acted bonafidely upon the Forms-C submitted by the Dealers of the other States.

12. The very purpose of prescribing filing of Forms-C firstly, is that there should not be any evasion of Tax by a Selling Dealer and evasion of tax from where the actual sales are effected; and secondly, the Purchasing Dealer should also suppress such purchase once he is issued Forms-C to the Selling Dealers.

13. We are of the considered opinion that the liberal approach of the Tax Board was not justified, looking to the Scheme of the Act and the Rules in this regard. It is also a settled

rule for interpretation that where the Statute is penal in character, it must be construed and followed.

14. Even the Hon'ble Apex Court has held that provisions have been 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 such provision. The breach would attract levy of penalty whenever the goods in movement have travelled with an incomplete form.

15. This view has been expressed by the Hon'ble Supreme Court in the case of *Guljag Industries Vs. Commercial Taxes Officer*, reported in 2007 (7) SCC 269 as under:-

"26. We are not concerned with non-filing of statements before the A.O. 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 consignment 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 non-compliance.

27. 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 quasi-criminal 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.

28. Moreover, in the present case, we find that goods in movement carried with Form No.18A/18C. The modus operandi adopted by the assessee 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 assessee in most of the cases is that they are not responsible for the misdeeds of the consignors. The other explanation given by the assessee 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 assessee 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 assessee.

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 assesseees 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 assesseees by carrying the goods with blank forms though signed by the consignee. In fact, the assesseees 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 A.O. to arrive at the taxable turnover as defined under Section 2(42) of the said Act. Therefore, we have emphasized the words "material particulars" in the present case. It is not open to the assesseees to contend that in certain cases of interstate 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) can not 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 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.

30. In the case of *Chairman, SEBI Vs. Shriram Mutual Fund*, reported in 2006(5) SCC 361, the Hon'ble Supreme Court found on facts that a mutual fund had violated SEBI (Mutual Funds) Regulations, 1996. Under the said Regulations there was a restriction placed on the mutual fund on purchasing or selling shares through any broker associated with the Sponsor of the mutual fund

beyond a specified limit. It is in this context that the Division Bench of this Court held that mens rea was not an essential ingredient for contravention of the provisions of a civil act. The breach of a civil obligation which attracts penalty under the Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention. It was further held that unless the language of the provision intends the need to establish mens rea, it is generally sufficient to prove the default/contravention in complying with the statute. In the present case also the statute provides for a hearing. However, that hearing is only to find out whether the assessee has contravened Section 78(2) and not to find out evasion of tax which function is assigned not to the officer at the check-post but to the A.O. in assessment proceedings. In the circumstances, we are of the view that mens rea is not an essential element in the matter of imposition of penalty under Section 78(5).

31. We may mention some of the judgments cited on behalf of the assessee. Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 came for interpretation before the Hon'ble Supreme Court in *Sodhi Transport Co. Vs. State of U.P.*, reported in 1986 (2) SCC 486. 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 assessee has relied upon the judgment of the Hon'ble Supreme Court in the case of State of Rajasthan Vs. D.P. Metals, reported in 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 22.1.97 a truck was inspected by CTO. The same was found without Form 18A. A show cause notice was issued to the assessee. After 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 incharge of the goods. It was held that the said penalty was leviable under two circumstances. Firstly, if there was non-compliance of 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 analyzing 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. 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.

33. In our view, the aforesaid judgment in the case of D.P. Metals (supra) 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 18A/18C which was duly signed by the assessee. Therefore, as stated above, we hold that the goods in movement were carried without the declaration Form 18A/18C. 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 the case of D.P. Metals (supra) has no application to the facts of the present case. As stated, we are concerned with the blank declaration Form 18A/18C which has travelled with the goods in movement, though signed, was left deliberately blank. The declaration Form 18A/18C is like a return under the Income-Tax Act, 1961. The Assessing Officer completes the assessment on the basis of Form 18A/18C. If that form is left blank in all material respects then it is impossible for the A.O. to arrive at the taxable turnover of the assessee. Therefore, in our view, the judgment of this Court in D.P. Metals (supra) has no application to the present case.

34. 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 Vs. 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.

35. For the aforesaid 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 14.10.03* (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 Vs.Commercial Taxes Officer)."

सत्यमेव जयते

16. Before reaching on any conclusion, it is necessary to quote the provision contained under section 61 of the RVAT Act, 2003, which is ad-infra:-

"61. Penalty for avoidance or evasion of tax - (1)
Where any dealer has concealed any particulars from any return furnished by him or had deliberately furnished inaccurate particulars therein or has concealed any transactions of sale or purchase from his accounts, registers or documents required to be maintained by him

under this Act or has avoided or evaded tax in any other manner, the assessing authority or any officer not below the rank of an Assistant Commercial Taxes Officer as may be authorized by the Commissioner, may direct that such dealer shall pay by way of penalty, in addition to the tax payable by him under this Act, a sum equal to two times of the amount of tax avoided or evaded."

From the bare perusal of the provision contained under section 61 of the RVAT Act, 2003, it is clear that the penalty can be levied for avoidance or evasion of tax where (i) any Dealer has concealed any particulars from any returns furnished by him; or (ii) has deliberately furnished inaccurate particulars therein; and (iii) has concealed any transaction of sale or purchase from its accounts, registers or documents required to be maintained by him under the RVAT Act of 2003.

The aforesaid three situations provide for levy of penalty in cases of active concealment and deliberate fraud or misinformation by the Assessee.

17. The Judgment delivered by the Division Bench of Rajasthan Tax Board in the matter of Tata Shree Bhagawati Oil Industries, Bharatpur (supra) cited by the counsel for the Assessee, has no binding effect as the same is not a precedent law binding upon the Constitutional Courts of Law.

The Judgment delivered by the Co-ordinate Bench of this Court at Principal Seat, Jodhpur in the matter of M/s. Kohinoor Industries, Jodhpur (supra) is not applicable looking to the peculiar facts of this case as the genuineness of Form-C was proved to be forged and fake one.

18. The Tax Board has neither recorded any cogent finding on merits of the case before setting aside the penalty nor it has considered the provisions of section 61 of the RVAT Act, 2003, more particularly, when the fact was proved before all the Authorities that Forms-C submitted by the Assessee were forged and fake to avoid payment of Tax. The penalty was rightly imposed upon the Assessee by the Authorities as he (Assessee) furnished inaccurate particulars and he also concealed the transactions of sale and purchase to avoid the payment of Tax. Therefore, the Assessee is liable to pay penalty u/s 61 of the RVAT Act, 2003.

19. In the result, the instant Sales Tax (VAT) revision petition stands allowed, the order dated 09.05.2017 passed by the Rajasthan Tax Board, Ajmer, in Appeal No. 1403/2011/Bharatpur, is quashed and set-aside and the Assessee shall be liable to pay the amount of penalty as per the Order dated 31.03.2010 passed by the Assessing Authority.

All pending applications, if any, stand disposed of accordingly.

(ANOOP KUMAR DHAND),J

(PANKAJ BHANDARI),J

NK Sharma/6