

SUPREME COURT OF INDIA

Assistant Commissioner, Anti Evasion Commercial Taxes, Bharatpur

Vs.

Messrs Amtek India Limited

C.A.No.896 of 2007

(Arijit Pasayat and S.H.Kapadia,JJ.,)

22.02.2007

JUDGMENT

Dr.Arijit Pasayat, J.

SLP(Civil)No.12528 of 2006

1. Leave granted. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court at Jaipur. By the impugned order the High Court dismissed the revision petition, filed by the appellant, and imposed cost of Rs.5, 000/- to be paid personally by the Commercial Tax Officer, Anti Evasion, Bharatpur who passed the assessment order dated 14.9.2001. Background facts in a nutshell are as follows:

2. Penalty under Section 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as the 'Act') was imposed on the respondent (hereinafter referred to as the 'assessee') on the ground that at the time of checking of vehicle on 7.9.2001, the documents produced showed that bill No.155 dated 29.9.2000 of M/s. Georg Fischer Disa Limited, Satyamangala Industrial Area, Tumkur, Karnataka raised on the respondent-assessee M/s. Amtek India Ltd., Biwadi along with delivery challan No. 5259 dated 3.9.2001 form No. ST-18A in which invoice No.155 was also mentioned and form No.ST -39 prescribed under Karnataka Sales Tax Act and built of North Eastern Carrying Corporation accompanying the said goods were produced for verification. However, date of the said invoice No.155 dated 16.2.2000, was held to be of an earlier point of time than the date mentioned in the delivery challan of 3.9.2001. Therefore, the Assessing Authority held that said document was doubtful and there was non-compliance with Section 78(2)(a) of the Act, and imposed the penalty of Rs.1, 36, 200/- @ 30% of value of goods on the respondent-assessee, the consignee or purchaser.

3. According to the assessee, plant and machinery and equipments purchased by respondent-assessee from the consignor though purchased under invoice No.155 dated 16.2.2000 in which due excise duty and Central Sales Tax @ 4% against C-Form was charged by the seller, but the goods were consigned and received after the lapse of about one year.

But that cannot mean that invoice raised by seller- company was not genuine and, therefore, the penalty was not justified.

4. Both the Appellate Authorities i.e. D.C. (Appeals) as well as Tax Board found the said explanation of the assessee satisfactory and correct and, therefore, set aside the penalty under Sec. 78(5) of the Act. The revenue filed a revision petition before the High Court under Section 86 of the Act on the supposed question of law arising in the matter. The High Court found that as a matter of fact none arises.

5. In the Revision Petition filed, the correctness of views expressed by the Appellate Authority i.e. the DC (Appeals) and the Tax Board were questioned. The High Court found that all relevant documents were produced, the declarations issued by the Sales Tax Authorities of both the States clearly established that transit and transactions were perfectly genuine and there was no reason for the Assessing Authority to hold the document to be non-genuine so as to attract levy of penalty at the rate of 30% of the value of goods under Section 38(5) of the Act. The High Court felt that the action of the authorities cannot be countenanced and they cannot take the plea of good faith. The alleged good faith was not established and on the contrary the action clearly indicated that the assessing officer was bent upon levying the demand overlooking the genuine documents. Accordingly, the revision petition was dismissed and costs were imposed.

6. Learned counsel for the appellant submitted that an error of judgment should not be treated as a mala fide action so as to warrant the severe criticism as done by the High Court and also to warrant imposition of cost.

7. There is no appearance on behalf of the respondent in spite of notice.

8. Whether an act has been done in good faith would depend upon the factual scenario. In order to establish "good faith", it has to be established that what has been imputed concerning the person claiming it to be so, is true.

9. "Good Faith" according to the definition in Section 3(22) of the General Clauses Act, 1897 means a thing, which is in fact done honestly whether it is done negligently or not.

10. Anything done with due care and attention, which is not mala fide is presumed to have been done in 'good faith'.

"Good Faith" is defined under Section 2(h) of the Limitation Act, 1963, as 'good faith'- nothing shall be deemed to be done in good faith which is not done with due care and attention"

11. Dealing with a case under the Indian Limitation Act, 1963, this Court held that the expression 'good faith' as used in Section 14 means "exercise of due care and attention". In the context of Section 14, the expression 'good faith' qualifies

prosecuting the proceeding in the court, which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. [See *Deena v. Bharat Singh*¹,

Section 52 of the Indian Penal Code, 1860 (in short 'IPC') emphasizes due care and attention in relation to "good faith".

11. In this case though the action of the concerned assessing officer, in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. This is a case where the officer should have been more careful and should not have acted in a manner as if he was a bloodhound and not a watchdog of revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of revenue.

12. Therefore, while holding that the action of the Assessing Authority was clearly unjustified, we direct deletion of the direction for imposition of cost. We, however, make it clear that in future if any such action comes to the notice of the Courts/Authorities, appropriate action shall be taken in accordance with law and the observations made in this case about lack of bona fide shall also be a factor to be taken note of.

13. The appeal is accordingly disposed of.

Judgment Referred.

¹(2002) 6 SC 0336