

SUPREME COURT OF INDIA

Asst.Commercial Taxes Officer

Vs.

Kansai Nerolac Paints Ltd.

C.A.No... of 2010

(S.H. Kapadia and Swatanter Kumar JJ.)

15.04.2010

JUDGEMENT

Swatanter Kumar, J.

1. Delay condoned.
2. Leave granted.
3. We may notice necessary facts giving rise to the present appeal.

“Vehicle No. RJ-19G-3661 was carrying `parchun' materials and in addition 377 pieces of drum bucket paints. These goods were transported from Ughna (Surat) to Jodhpur under Bilty No. 014951 dated 17.06.1997 issued by M/s. Deshbandhu Transport Company and the goods were consigned to M/s. Goodlass Nerolac Paints Limited. This vehicle was intercepted and checked by the Customs Enforcement Department (for short `the Department').

The competent authority during the course of the enquiry found that the nerolac paint buckets were transferred by stock transfer but the declaration form ST 18A was completely blank. Treating the consignment under the category of incomplete documents in terms of Section 78(2) of the Rajasthan Sales Tax Act, 1994 (for short `the Act') and forming an opinion that there was an intention to commit evasion of tax, a notice to show cause was issued that why penalty be not imposed. Reply thereto was filed by the owner of goods. Finding the reply without any merit and rejecting the same, the competent authority vide its order dated 23.06.1997 imposed a penalty of Rs.1,24,920/- in terms of Section 78(5) of the Act. This order of the competent authority was challenged in appeal by the owner of goods before the Deputy Commissioner (Appeals), Commercial Taxes-II, Jaipur which, vide order dated 03.11.2003, allowed the appeal and held that the penalty against the owner of the goods could not be imposed as there was no 2 intention to commit evasion of tax and

thus set aside the order of the lower authority. The Department challenged this order before the Rajasthan Tax Board, Ajmer Bench (for short `the Board'), on different grounds.”

4. The appeal preferred by the Department came to be dismissed by the order of the Board dated 04.04.2005. The Board, while setting aside the order, expressed the view that prior to 22.03.2002 penalty could not be imposed on the owner of the goods under Section 78(5) of the Act besides that there was no intention to commit any evasion of tax.

5. Aggrieved by the order of the Board, the Department preferred revision petition under Section 86 of the Act before the High Court of Judicature for Rajasthan at Jodhpur, and after stating the facts, the Department raised, inter alia, the following important questions of law:- "(i) Whether mens rea to evade the tax on the part of the dealer is a necessary ingredient for imposition of penalty u/s 78(5) of the Act of 1994, for violation of provisions of Section 78(2) of the Act of 1994? 3 (ii) Whether the blank declaration form ST-18A with the goods in transit by itself attracts the provisions of penalty under Section 78(5) of the Act of 1994 for violation of the provisions of Section 78(2) of the Act of 1994? (iii) Whether the learned Tax Board has erred in law in holding that prior to 22.3.2002 the penalty u/s 78(5) of the Act of 1994 for violation of Section 78(2) of the Act of 1994 could not have been imposed against the owner of the goods? (iv) Whether the findings arrived at by the learned Tax Board are contrary to law and facts and perverse? (v) Any other question of law which this Hon'ble Court considers just and proper in the facts and circumstances of the case may also be decided."

6. The High Court vide its order dated 17.12.2007 dismissed the revision petition. This order is impugned by the Assistant Commercial Taxes Officer in the present appeal under Article 136 of the Constitution of India. The primary challenge before us is that the High Court has not recorded any reason for rejecting the revision petition of the appellant despite the fact that the matter was argued at length and various questions of law were raised before the High Court. We may also notice that in the grounds taken before us, various questions of fact and law have been raised and it is specifically urged that the impugned judgment of the 4 High Court is contrary to the principles stated by this Court in the case of Guljag Industries v. Commercial Tax Officer [(2007) 7 SCC 269], where the Court has held that the form should be complete in all respects and should be supported by requisite declaration/documents.

7. It will be more appropriate to reproduce the order impugned in the present appeal at this stage itself:-

“Heard learned counsel for the petitioner.

The Tax Board set aside the penalty imposed upon the owner of the goods in a transaction which took place prior to 22.3.2002.

After going through the reasons given by the Tax Board, I do not find any illegality in the impugned order passed by the Tax Board.

Consequently, this revision petition, having no merits, is hereby dismissed.”

8. As already noticed, the principal challenge raised before us is that the High Court has disposed of the matter by a cryptic order and has not given any reason for rejecting the revision petition preferred by the Department. It is urged that the questions raised in the revision petition were likely to arise in a number of cases and as such it was expected of the High Court to deal with the contentions raised in some elaboration.

9. We have noticed that the High Court has not recorded its own reasoning for dismissing the revision petition in accordance with law. It would have certainly been more appropriate for the High Court to examine the matter at some length and deal with the arguments/grounds raised in the petition before it. Be that as it may, another aspect of the matter which this Court has to take note of is that, in the case of Guljag Industries (supra) to which one of us (Kapadia J.) was a party, this Court had held that the object of Section 78(5) of the Act was to remedy the loss of revenue and where Form ST 18A/18C was duly signed but without giving material particulars, would automatically attract levy of penalty for breach of Section 78 (2) of the Act. It was also stated in the judgment that this modus operandi of the owner of goods in that case did indicate mens rea. This principle was further explained and was finally settled in a subsequent judgment of this Court in *Assistant Commercial Taxes Officer v. Bajaj Electricals Ltd.*¹ to which again one of us 6 (Kapadia J.) was a party. In this case the Court explained the expression "person in charge of the goods" with reference to the declaration Form ST 18A prescribed under Rule 53 of the Rajasthan Sales Tax Rules, 1995 and substitution of this expression by "the owner of the goods or person in charge of the goods" by amending Act 7 of 2002. The Court also reiterated with approval the dictum in relation to the presence of mens rea in such cases holding that modus operandi adopted by the consignee of not giving material particulars in Form ST 18-A would by itself meet the object of mens rea.

“The records and the above noticed facts clearly show that the High Court erred in law in not recording any reasons for rejecting the respective contentions raised before the Court. We have also noticed that some of the judgments of this Court referred by the Department and/or by the owner of goods have not been referred to, much less, commented upon in accordance with law. Thus, we have no option except to say that the order of the High Court is unreasoned and suffers from the infirmity of non-application of mind.”

10. For the reasons afore-recorded, we set aside the order dated 17.12.2007 and remit the case to the High Court with a request to hear the case de novo and pass appropriate order in accordance with law.

“There shall be no order as to costs. To that extent the appeal is allowed.”

¹(2009) 1 SCC 308