

Rajasthan Tax Board, Ajmer

Appeal No. 1125/2016/Jaipur

M/s Stovekraft Private Limited,
A-56, Malviya Nagar,
Jaipur - 302017.

...Appellant

VERSUS

Assistant Commercial Taxes Officer -II,
Anti Evasion, Zone-III, Jaipur

.....Respondent

D.B.

SHRI RAJEEV CHOUDHARY, MEMBER
SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Moti Kotwani, Advocate

for Appellant

Shri Ramkaran Singh,
Dy. Govt. Advocate

for Respondent

Dated : 09/02/2018

JUDGMENT

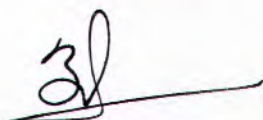
1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant"), against order of the Appellate Authority-I, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority") who vide his order dated 03.03.2016 has rejected the appeal against order of the Assistant Commercial Taxes Officer-II, Anti Evasion Zone-III Jaipur (hereinafter called the "assessing officer" or "AO"), passed under Section 76 (6), (12) and (13) of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act") dated 29.05.2015, wherein a tax amounting to Rs. 31,035/- + 4,23,486/- and a penalty amounting to Rs. 217245/- + 8,76,177/-, totaling to Rs. 15,47,943/- was imposed.
2. Brief facts leading to the present appeal are that the Anti Evasion authorities checked the vehicle no. RJ10-GA-2720 on

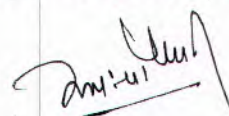
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30.04.2015 near Bais Godam, Jaipur. The driver who was incharge of the goods, presented Bilty No. 1057 dated 24.04.2015 of M/s EFC Logistic India Pvt. Ltd., Bangalore along with Stock Transfer Invoice Nos. 1506101826, 1506101827, 1524000401 & 1502050250 dated 24.04.2015 of the appellant M/s Stovekraft Pvt. Ltd. While the invoice numbers 1506101826 and 1506101827 pertain to various kitchen appliances, the invoice number 1524000401 relates to LED TVs. The fourth invoice i.e. number 1502050250 is irrelevant in the present matter because it contained the goods 'catalogue book' having no commercial value separately. The officer who checked the vehicle, detained it on the same day as the documents were purportedly found to be incomplete and the prescribed form VAT-47A was not carried alongwith the goods, and there was a suspicion that that the vehicle may carry excess or different goods from the declared one.

3. After detention of the vehicle on 30.04.2015, the appellant on the very day submitted the electronically generated Form VAT-47A before the officer who checked and detained the vehicle. This form was generated on 24th April, 2015 at 09.22 PM, in which three invoices were declared, viz. number 1506101826, 1506101827 & 1524000401, and for all of them the name of the commodity has been mentioned as 'Kitchen Home Appliances'. Although the invoice pertaining to the LED TVs number 1524000401 was entered in the Form VAT 47A and value of the same is declared as Rs. 27,00,000/-, but in the column: 'Name of Commodity', the goods have been mentioned as 'Kitchen Home Appliances' and not 'LED TVs' as such. The physical verification of the goods as carried in the vehicle, was done on 04.05.2015 but no extra goods were found on verification.
4. As the goods were brought into the State on stock transfer basis for which declaration form VAT-47A was required to be

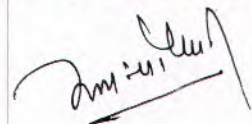




furnished but the same was not produced by incharge of the goods before the officer who checked the vehicle, therefore, on contravention of section 76(2) and that the documents were false and forged, therefore, a notice was issued by the assessing officer under section 76(6), (12) and (13) for levy of tax and penalty. The AO after hearing the appellant, did not accept his reply and by treating it a case of 'false and forged documents', imposed tax and penalty amounting to rupees 15,47,943/- vide his order dated 29.05.2015.

5. Aggrieved of this imposition the appellant preferred an appeal before the appellate authority who held that as the AO has found that goods were being transported with false and forged documents and this fact was not controverted by the appellant and that documents submitted at the time of checking were contradictory, therefore, he too held that the goods in question were carried with forged documents and accordingly has upheld the levy and rejected the appeal vide his order dated 03.03.2016 and against that order, this appeal has been preferred before the Tax Board under section 83 of the Act.
6. The learned advocate appearing for the appellant submits that the vehicle was checked when it was standing in front of the business place of the appellant and the driver had submitted the invoices and bilty of the goods. Though the form VAT-47A was issued on 24.04.2015 for all the three invoices, but inadvertently it was not with the driver at the time of checking but the same was submitted before the checking officer on 30th April, 2015 itself. Since the required declaration form VAT-47A was submitted before the AO on 30.04.2015 itself, so in light of the judgment of the Hon'ble Supreme Court in D.P. Metals' case (2001)124 STC 611 SC, the form must have been accepted by him and the levy of penalty by the AO was against the settled principle of the law as enunciated by the Hon'ble





Supreme Court. He further submits that the appellant is maintaining his books of accounts on the modern online accounting software tool called 'SAP' and entries of the goods can be checked online instantly on their system, so there is no probability of any evasion, therefore, levy of tax and penalty was not as per law, therefore, the same may be set aside.

7. Learned Deputy Government Advocate appearing for the respondent supported orders of the lower authorities and submitted that it is undisputed that the goods under transportation were brought on stock transfer basis for sale in the State of Rajasthan, for which declaration form VAT-47A was mandatory to be carried along the goods. Statements of the driver clearly indicates that there was no such declaration form carried by him along with the goods. He also submits that the goods as carried by the GR No. 1057 dated 24.04.2015 were declared to be 'Kitchen Goods', whereas, apart from the items used in kitchen, the actual goods also contained LED TVs. So, it was a case of non-furnishing of declaration form VAT-47A as well as that of wrong declaration as the LED TVs were not declared in the GR. He, therefore, supported the imposition of tax and penalty and requests to disallow the appeal.
8. We have gone through the submission of both the parties and perused the relevant record. This fact is not in dispute that the goods under transportation were dispatched from Bangalore by the appellant to its branch at Jaipur, Rajasthan. The GR of the goods only mentioned the 'Kitchen Goods', whereas the actual goods also consisted of 216 nos. of LED TVs. After detention of the vehicle, declaration form VAT-47A number E47A240415459813 was submitted before the AO but only 'Kitchen Home Appliances' were declared in the said form and no declaration whatsoever regarding the LED TVs was made in this form. The AO arrived at the conclusion that the goods under

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transportation were in-fact not as per the declaration form VAT-47A and termed the declaration/documents as false or forged and imposed penalty at the rate of 30% of the value of the goods alongwith the amount of tax as leviable in light of the section 76 (12) and (13).

9. On perusal of the AO's file it is found that the goods under transportation were consigned from Bangalore on 24.04.2015 through the Goods Receipt (GR) number 1057 dated 24.04.2015 of M/s EFC Logistic India Pvt. Ltd. and the description of the goods and documents' details has been mentioned therein as :

"302 C/Boxes; Kitchen goods;
Invoice nos. 1502050250, 1506101826/27, 1524000401;
e-sugam Form no. 15681189559
(e-sugam is Karnataka State's Declaration form);
20 Ft container; seal no. 0278".

On further perusal of the invoices as mentioned in the GR, it is evident that the invoice number 1506101826 pertains to LPG Stoves; invoice no.1506101827 pertains to Pressure Cookers and the invoice no. 1524000401 pertains LED TVs. The fourth invoice bearing number 1502050250 is inconsequential because it contained only the catalogue books. The goods belonging to these invoices have been sent by the appellant company's Bangalore facility on branch transfer basis to it Jaipur office. So, by no Stretch of imagination it can be concluded if the documents were 'false and forged', as held by the AO. Accordingly, the AO's finding being devoid of any substance, stands negated.

10. Secondly, when coming to the issue of violation of section 76(2)(b) as alleged by the AO that Form VAT 47A was not found at the time of checking, it is worth mentioning that the form VAT-47A was required to be generated electronically and the appellant has generated that said form on the very day of the dispatch from Bangalore i.e. 24th April 2015. The said form as

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available on AO's case file shows that it was electronically generated on 24.04.2015 at 9:22:46 PM. It is also found that the appellant had also generated a declaration form as required under the Karnataka VAT Act, called the 'e-sugam' on 24.04.2015 at 7:39 PM. So, in the first place we find that the required declaration form had been generated on dispatch of the goods from Bangalore and the e-declaration forms of both the States were generated by the appellant, therefore, any eventuality or intent to evade the tax, is ruled out. In the form VAT-47A as generated on 24.04.2015 and submitted before the enquiry officer on 30.04.2015, the details as mentioned against the invoice no. 1524000401, the name of the commodity seems to have mistakenly submitted as 'Kitchen Home Appliance' while filling up the details for generating the said form online, like two other invoices. Though value /estimated value of the Goods has correctly been mentioned as Rs. 27,00,000/- and it seems to be a bona-fide clerical mistake. Moreover, the tax rate of 'kitchen appliances' as well as the 'LED TV' is same i.e. 14.5%, therefore, there is no reason to believe that different goods were entered in the said Form with an intent to avoid or evade tax.

11. Now, coming to the submission of the appellant that in light of the D.P. Metals' judgement (2001)124 STC 611 SC, wherein it has been held that if for any reason the appellant could not carry the declaration form alongwith the goods, the same should be considered. The Hon'ble Supreme Court in D.P. Metals' case (supra) has held that:

"Such submission of false or forged documents or declaration at the check-post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. Hiding the truth and tendering falsehood would per se show existence of mens rea, even if required. Similarly where, despite opportunity having been granted under Section 78(5) if

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the requisite documents referred to in sub-clause 2(a) are not produced, even though the same should exist, would clearly prove the guilty intent. It is not possible to agree with the counsel for the respondents that breach referred to in Section 78(5) can be regarded as technical or venial. Once the ingredients of Section 78(5) are established, after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty. **If by mistake some of the documents are not readily available at the time of checking, principle of natural justice may require some opportunity being given to produce the same."**

As held in the earlier paras, the documents were neither false nor forged and no *mens rea* has been found in the instant case and moreover, the declaration form was generated on very day of the movement of the goods from Bangalore, therefore, in light of the abovementioned judgment some opportunity ought to have been given to the appellant to submit the form which was not readily available at the time of checking. But it transpires from scrutiny of the whole proceeding that the officers instead of affording some opportunity in light of the principle of natural justice, have instead made all out efforts to give finding that the documents were false and forged. Thus, the inspecting officer as well as the AO, both have tried to 'make a mountain out of a molehill'.

12. This fact is beyond any doubt that the declaration form VAT-47A was duly generated on 24.04.2015 itself, the date of dispatch of the goods from Bangalore, and it contained the details of all the three invoices, though for one invoice the name of the goods seems to have inadvertently mentioned as same as that of the other two invoices, therefore, looking into the facts and circumstances of the case the form should have been accepted instead of terming the documents as false and forged.
13. On further perusal of the case file we find that the proceeding has been drawn in a cursory manner without appreciating the facts in true

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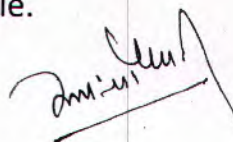
spirit of the law and the procedure as laid down. It is worth mentioning that the assessing officer, apart from imposing the penalty, has also resorted to sub-section (12) and (13) of section 76 and levied the tax also, in utter disregard to the provisions of the law as contained in these sub-sections, which are reproduced for ready reference, as under :-

"(12) If a transporter fails to give information as required from him under clause (d) of sub-section (2) about the consignor, consignee or the goods within such time as may be specified or transports the goods with false or forged documents, besides imposing the penalty under sub-section (6), it shall be presumed that the goods so transported have been sold in the State of Rajasthan by him and he shall be deemed to be a dealer for those goods under this Act."

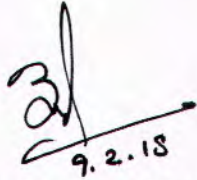
"(13) The provisions of this Act shall, for the purpose of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to the transporter deemed to be a dealer under sub-section (12)."

On bare reading of these two sub-sections there is no ambiguity, whatsoever, that these provisions can be invoked in the cases where a transporter fails to give information about the consignor, consignee or the goods within the specified time, or the goods have been transported with false or forged documents, but none of these two circumstances exists here, therefore, there was no occasion for the AO to invoke these provisions to levy the tax. It shows the lack of knowledge of the law as well as the lack of proper application of the law on part of the adjudicating officer. The officer checking the vehicle as well as the AO have tried hard to frame the case or to give colour to it, as if the goods were transported with false and forged documents, whereas no document has been proved to be false or forged. However, we further refrain from pointing out procedural lapses which are in abundance on the case file.



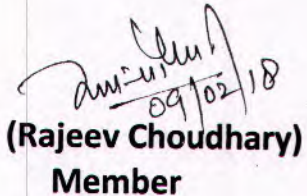


14. On the basis of the facto-legal analysis as done in the present matter and under the facts and circumstances of the case, we do not find any valid ground for imposition of penalty u/s 76 (6) of the Act, more so, the levy of tax by invoking sub-section (12) and (13) was totally injudicious action, therefore, the order of the appellate authority as well as that of the AO can't be sustained and deserves to be set aside.
15. Accordingly, the orders of the lower authorities are set aside and the appeal is accepted.
16. Order pronounced. The Registry is directed to keep photo copy of the AO's case file/record, on RTB's appeal file.



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(Omkar Singh Ashiya)
Member



09/02/18

(Rajeev Choudhary)
Member