

RAJASTHAN TAX BOARD, AJMER

Appeal No. 1741/2012/Banswara

M/s. Wagad Constructions Co., Banswara.

.....Appellant

Versus

Assistant Commissioner,
Circle-Banswara.

.....Respondent

Divisional Bench.

Sh. Madal Lal, Member

Smt. Asha Kumari, Member

Present :

Shri P.D. Jawaria,

Advocate for the appellant (Assessee).

Shri R. K. Ajmera,

Dy. Govt. Advocate for the Respondent (Revenue)

Date of Order : 23.03.2015

JUDGEMENT

1. This appeal has been filed before us against the order of the Deputy Commissioner (Appeals), Commercial Taxes, Udaipur dated 22.06.2012 whereby the order dated 23.05.2011 passed by the Assistant Commissioner, Circle-Banswara [(in short "Assessing Authority" (AA))] under section 6 of The Rajasthan Tax On Entry of Motor Vehicles Into Local Areas Act, 1988 (in short 'the Act') read with Section 24, 55 and 58 of Rajasthan Value Added Tax, 2003 (in short as VAT Act) levying entry tax, proportionate interest along with penalty was maintained.

2. Briefly stated, facts of the case are that, at the time of the assessment under the VAT Act, the appellant who is registered dealer under the VAT Act, was found having imported ten Dumpers costing Rs. 2,46,66,579/- during the year 2009-10 into the State. It was also found that neither the appellant paid entry tax on the entry of these Dumpers into the local area of the State u/s 3 of the Act nor did he disclosed this fact in returns filed for the relevant assessment year. Accordingly, the learned AA issued a show cause notice to the appellant in this regard and after considering the reply as unsatisfactory, levied entry tax and interest on the value of the Dumpers u/s 3 of the Act along with penalty u/s 6 of the Act. The appellant challenged the order levying entry tax, interest and penalty before the learned Appellate Authority who, after hearing the both parties, affirmed the levy of tax, interest and penalty holding that the Dumpers are also motor vehicles within the meaning of section 2(28) of the Motor Vehicle Act, 1988. Appellant being aggrieved by affirming of levy of entry tax, interest and penalty, filed appeal before this Court challenging the order of the Appellate Authority for maintaining the above demand.

3. Arguments of the learned counsel for both the parties were heard and the record of the case was also perused.

4. Learned counsel for the appellant argued that the Dumpers imported by the appellant during the year 2009-10 were specialised equipments adapted for use within

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their enclosed Area only and, therefore, these were not motor vehicles within the meaning of section 2(28) of the Motor Vehicles Act, 1988. This being so, no entry tax on the import of these equipments was leviable under the provisions of the Act. Referring to the definition of a motor vehicle provided u/s 2(28) of the Motor Vehicles Act, 1988, learned counsel argued that the definition excludes all those vehicles which were meant for running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimetres. In the light of above definition, he argued that since the Dumpers purchased by him for use in his construction area, these could not be taken as motor vehicles within the meaning of above definition and, therefore, learned AA committed an error in levying entry tax there on treating dumpers as motor vehicles under the Act. His contention was that the dumpers imported by appellant could not be taken as motor vehicles within the meaning of section 2(28) of the Motor Vehicles Act, 1988 for the purpose of levying entry tax, interest and penalty u/s 6 of the Act. Thus, in the wake of above provisions the dumpers imported by the appellant are specialised equipments exclusively meant for use in their construction area only, could not be treated as motor vehicles by any stretch of imagination.

6. As regards the levy of penalty u/s 6 of the Act, learned counsel argued that when the appellants recorded the transactions pertaining to the purchase of Dumpers in their books of accounts and did not conceal anything in this regard, no penalty u/s 6 of the Act was leviable in the absence of any malice on their part to evade or avoid tax. In support of his contention, he placed reliance on judicial pronouncement of the Hon'ble Supreme Court reported in **23 VST 249 Sree Krishna Electricals Vs State of Tamilnadu and another** passed in this regard.

7. Learned DGA for the Revenue, on the other hand, defended the order passed by the learned AA. His contention is that the Dumpers imported by the appellant into the local area of the State were nothing but motor vehicles within the meaning of section 2(28) of the Motor Vehicles Act, 1988 and, therefore, these were liable to pay entry tax and interest under the Act. Since appellant failed to pay hence, was also liable to penalty u/s 6 of the Act. In support of his argument, he relied upon the decisions of the Hon'ble Rajasthan High Court reported in **15 RTJS 47 and of Rajasthan Tax Board reported in (2003) 2 RTR 484** wherein it was clearly held that the dumpers are motor vehicles and exigible to entry tax under the provisions of the Act. He fully supported the orders passed by the learned authorities below levying entry tax on the import of the dumpers into the local area of the State under the Act. As regards to levy of penalty, he argued that since the appellants admittedly failed to pay due entry tax in the manner prescribed under the Act, penalty prescribed u/s 6 of the Act was leviable and defended the order passed by the learned Appellate Authority in the matter of penalty also.

5. We have carefully considered the arguments of both the learned counsel and have also

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looked into the provisions of law on the point whether the dumpers are motor vehicles, for the purpose of Section 2(e) and 2(28) of the Motor Vehicles Act, 1988.

Section 2(e) "Motor vehicle"-means a motor vehicle as defined in clause (18) of section 2 of the Motor Vehicles Act, 1939 and includes motor cars, motor taxi cabs, motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor minibuses, motor vans, motor lorries trailers and chassis of motor vehicles and bodies or tankers built or meant for mounting on chassis of motor vehicles, but excludes tractors.

Section 2(28) of the Motor Vehicle Act, 1988 defines the term Motor Vehicles as follows :

(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

6. The question whether the dumper is "motor vehicle" within the meaning of section 2(28) of the Motor Vehicles Act, 1988 came up for consideration before the Hon'ble Supreme Court of India in the case of Bolani Ores Ltd. vs. State of Orissa reported in AIR 1975 SC 17. In this case, the question was whether the dumpers, rockers and tractors are "motor vehicles" and taxable under the Act or not, with reference to section 2(28) of the Motor Vehicles Act, 1988. Their Lordships of the Hon'ble Supreme Court of India held as under,-

"Thus the dumpers and rockers though registrable under the Motor Vehicles Act are not taxable under the Bihar Taxation Act as long as they are working solely within the premises of the respective owners. So far as the tractors are concerned they are neither registrable under the Motor Vehicle Act nor taxable under the Taxation Act."

7. This question again came up for consideration before the Hon'ble Supreme Court of India in the case of M/s Central Coal Fields Ltd. vs. State of Orissa reported in AIR 1992 SC 1371 and the Hon'ble Apex Court, after reconsidering the case of Bolani Ores Ltd, (supra) held that the dumpers and rockers are motor vehicles. It was observed as under,-

"It would be appropriate now to mention that some documentary material was sent to us by the appellants by means of an affidavit after we had reserved judgement. The material is suggestive of the fact that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 kms. per hour and on bridges and culverts at a speed not exceeding 8 kms. per hour. From this it is suggested that they have a minimum weight fixed on some principles. Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in market contrast to

chain plates like cater pillars or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads. The mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provisions was read as 'suitable' in *Bolani Ore's case (AIR 1975 SC 17)* by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable not suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicle adapted or suitable for use on roads and being motor vehicles perse, as held in *Bolani Ores case*, were liable to taxation on the footing of their use or kept for use on public roads; the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence entitled to a regulatory and compensatory tax. (Exemptions claimable apart). The appellants, therefore, in our view, have no case for grant of any relief in these appeals."

8. In the above case, therefore, Hon'ble Apex Court after revising their earlier decision given in *Bolani Ores Ltd's case* held that the word "adapted" should be read as "suitable" and if the Dumpers can be made suitable to run on the public roads, they should be taken as motor vehicles for the purposes of taxation under the Act. Hon'ble Supreme Court of India took a similar view in the case of *Union of India and others vs. Chowgule and Co. Pvt. Ltd* reported in **AIR 1992 SC 1376**. Following the above view of the Hon'ble Apex Court, **Hon'ble Rajasthan High Court also held the same view that the dumpers are motor vehicles within the meaning of section 2(28) of the Motor Vehicle Act, 1988 in the case reported in 15 RTJS 47.** The above view of the Hon'ble Apex Court has set at rest all other views taken earlier by the Hon'ble Courts subordinate to the Hon'ble Apex Court. In the instant case, it has not been denied that the dumpers can be run on the public roads of-course at a slow speed. We also cannot lose sight of the fact that the dumpers run on tyres, in marked contrast to chain plates like cater pillars or military tanks and, therefore, it is evident from above that they have been adapted for use on roads. The mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these dumpers makes it clear that they are not manufactured or adapted for use only in factories or enclosed premises, as has been claimed by the learned counsel. The fact that the Dumpers purchased by the appellant are heavy and specially made for being operated in their construction area cannot be taken to deny that they cannot move on the roads or that they are not suitable for use on roads. In this view of the matter, we have no hesitation in holding that the dumpers purchased by the appellant despite being heavy and specialised equipment, were adapted or suitable for use on public roads and, therefore, they are motor vehicles within the meaning of section 2(28) of the Motor

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Vehicles Act, 1988 and for the purposes of taxation u/s 3 of the Act.

9. Tippers are akin to dumpers and run on the hydraulic system as ruled by the Hon'ble Karnataka High Court in the matter of M/s Mineral Sales (p) Ltd. Vs State of Karnataka on 20-09-1985 equivalent citations; ILR 1986 KAR 3226

“From the above discussion, it, therefore, follows that the Tippers are not in any way different from dumpers, in its design, construction, and usage. If the observations of the Supreme Court are rightly understood in relation to tippers, the distinction made by the R.T.O. relying on the clarification issued by the Government, is without any difference”.

10- Apart from that, Transport department of Rajasthan has also registered the tippers so purchased in the name of hydraulic dumper as evident from the certificate of registration. Thus, Tippers are hydraulic dumpers, hence rate of tax applicable on the tippers purchased by the appellant would be as per item No. 155 of the Schedule IV to the VAT Act, and if the tax not deposited within stipulates time, interest would be leviable accordingly.

11- As regards the levy of penalty u/s 6 of the Act, is concerned Deputy Commissioner (Appeals) has't given any clear view on penalty. The arguements of both the parties and facts available on the record, makes it clear that the appellant has recorded purchases of dumpers in his books of accounts. Therefore, in the light of judgement passed by the Hon'ble Supreme Court 23 VST 249, penalty imposed by the AA, is not maintainable.

12. In result, the appeal filed by the appellant is partially allowed and remanded for fresh levy, according to para 10 above; order of the Appellate Authority is modified to that extent.

Order pronounced

आशा कुमारी
23.3.15
(**ASHA KUMARI**)
MEMBER

23.3.2015
(**MADAN LAL**)
MEMBER