

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**  
**JAIPUR BENCH, JAIPUR**

**ORDER**

**S.B. Sales Tax Revision Petition No. 03/2005**

Assistant Commercial Taxes Officer, Flying Squad-III, Zone-I, Jaipur

***Versus***

M/s Vijaivergiya & Company, Phulera, District Jaipur

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Date of order

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September 28, 2007

**PRESENT**

**HON'BLE DR. JUSTICE VINEET KOTHARI**

Mr. Amit Ratnawat on behalf of Mr. R.B. Mathur for the petitioner-  
Revenue

Mr. Devendra Kumar for the respondent assessee

**BY THE COURT:**

1. Heard learned counsels.
  
2. The penalty under Section 4 of the Rajasthan Luxuries Tax Act, 1994 read with Section 78(5) of the Act was imposed on the assessee as during the checking of the goods in transit, one bill and one bilty was found, and on further checking, two bills and three copies of one blank bilty were found, which were not entered in the

bilty. Learned counsel for the assessee points out that since the tobacco products were exempt from the Sales Tax and the Luxuries Tax in question could not be imposed on the respondent assessee because the Rajasthan Luxuries Tax Act itself has been declared ultra vires by the Hon'ble Supreme Court in the case of the respondent assessee itself in the case ***Godfrey Phillips India Ltd. & Anr. Vs. State of U.P. & Ors.*** reported in **(2005) 5 SCC 515** and therefore, there was no question of evasion of Luxuries Tax. He therefore, submits that no penalty under Section 78(5) of the RST Act could be imposed on account of alleged evasion of Luxuries Tax.

3. In view of the Luxuries Tax Act itself having been declared ultra vires, there is no question of any penalty under Section 78(5) of the RST Act in the present case. The two appellate authorities, therefore, have rightly set aside the the penalty.
4. Consequently, this revision petition of Revenue having no force is dismissed with no order as to costs.

**(Dr.VINEET KOTHARI),J.**