

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

JUDGMENT

S.B. Sales Tax Revision Petition No.9/2009
ACTO Vs. M/s Amit Stone Crusher & Ors.

Date of Judgment : **31st March 2011**

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur, for the petitioner- Revenue.
None present for the respondent- Assessee.

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1. This revision petition is directed against the order dated 04.04.2007 of the Tax Board whereby Revenue's appeal was dismissed upholding the order of learned Deputy Commissioner (Appeals) dated 28.03.2005. Both the appellate authorities held that penalty under Section 78 (5) of RST Act, 1994 on the respondent- assessee, owner of the goods, found in transit at the time of checking on 15.09.2003 through Vehicle No.RJ-02-G-0852 at 'Dharuheda' Check Post was not accompanied by the declaration in Form ST-18A though the goods in question found to be carried through the vehicle, were notified under the RST Rules, 1994.

2. The penalty under Section 78 (5) has been set aside by the appellate authorities on the ground that prior to amendment of Section 78 (5) w.e.f. 22.03.2002 such penalty could not be imposed on the owner of the goods but could only be imposed on the person in-charge of the goods.

3. This controversy has been put to rest by the Hon'ble Apex Court in the case of **Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd.**, reported in **(2009) 1 SCC 308**, in which the Hon'ble Apex Court has held as under:

*“From Section 78 (5) read in its entirety with Rule 53 of the 1995 Rules, it is clear that penalty was liable to be imposed for importation of any taxable goods for sale without furnishing a declaration in Form ST 18-A completely filled in all respects. The duty to fill and furnish the said form was imposed on the purchasing dealer. Therefore, Section 78 (5) as it stood prior to 22.3.2002 imposed penalty if possession or movement of goods took place, inter alia, in breach of Section 78 (2) (a) on “the person in charge”, which included the owner. Section 78 (5) comes after Section 78 (4) (c) which talks about release of the goods to “the owner of the goods” on his giving of adequate security. It is the owner (importer) who has to fill in Form ST 18-A. It is the owner who is entitled to seek release under Section 78 (4) on giving security. It is the owner who is entitled to hearing under Section 78 (5) and, therefore, the expression “person in charge of the goods” under Section 78 (5) would include the owners. Moreover, under Section 78 (2) the words used are “person in charge of a vehicle or carrier of goods in movement” whereas the words in Section 78 (5) refer to “person in charge of the good”. The words “in movement” do not find place in Section 78 (5) and therefore the expression “person in charge of good” under Section 78 (5) was wider than the expression “person in charge of goods in movement” under Section 78 (2) (a). **Consequently, the expression “person in charge of the goods” under Section 78 (5) who is given an opportunity of being heard in the***

enquiry would include the “owner of the goods”.

Thus, according to the aforesaid decision of the Apex Court, the order passed by the authorities below cannot be sustained.

4. However, the Apex Court's decision in terms of para 32 of the decision of Hon'ble Apex Court in the case of **State of Rajasthan & Anr. Vs. D.P. Metals**, reported in **(2002) 1 SCC 279**, which is also quoted herein below:

“.... 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, principles of natural justice may require some opportunity being given to produce the same.”

5. Consequently this revision petition of Revenue is allowed setting aside the orders passed by the appellate authorities as well as Assessing Authority dated 28.03.2005; the case is remanded back to the learned Assessing Authority for decision afresh of the said penalty proceedings in the light of aforesaid decisions. No costs.

(Dr. VINEET KOTHARI), J.