

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

1. S.B. Sales Tax Revision Petition No.24/2008
Assistant Commissioner, Anti-Evasion-II, Jaipur

v.
M/s Anshu Jain, Sanjay Jain

2. S.B. Sales Tax Revision Petition No.12/2008
Commercial Taxes Officer, Circle-G, Jaipur

v.
M/s P.R. Rolling Mills Pvt. Ltd.

3. S.B. Sales Tax Revision Petition No.20/2008
Assistant Commissioner, Anti-Evasion-II, Jaipur

v.
M/s Namarta Jain, Rohit Jain

4. S.B. Sales Tax Revision Petition No.88/2012
Assistant Commercial Taxes Officer, Anti-Evasion-II, Kota

v.
Shri Lalit Kumar

5. S.B. Sales Tax Revision Petition No.336/2008
Assistant Commissioner, Anti-Evasion-II, Jaipur

v.
M/s Vijay Industries, Jaipur

Date of order

31.10.2015

Hon'ble Mr. Justice J.K. Ranka

Reportable

Ms. Meenal Ghiya for
Mr. R.B. Mathur, for petitioners
Mr. Devendra Kumar }
Mr. Dinesh Kumar } for respondent-assessee
Mr. Alkesh Sharma }
Mr. Gunjan Pathak }

By the Court

1. These instant petitions involving common question of law is directed against the order of Rajasthan Tax Board and is decided by this common order for the sake of convenience and as agreed by the parties. The Tax Board in the impugned order came to the conclusion that the Assistant Commissioner, Commercial Taxes Department, Anti Evasion Wing, who passed the assessment order levying tax under the Rajasthan Tax on Entry of Motor Vehicles Into Local Area Act, 1988, had no jurisdiction, therefore, has quashed the assessment orders itself.

The appeals were admitted on questions :-

- “i) Whether in the facts and circumstances of the case the Rajasthan Tax Board has not acted illegally and perversely in allowing the appeal filed by the respondent and setting aside the order passed by the appellate authority by which the matter was only remanded to the assessing authority.
- ii) Whether in the facts and circumstances of the case the Rajasthan Tax Board has not acted illegally and perversely in allowing the appeal filed by the respondent and setting aside the order passed by the appellate authority holding that the Anti-evasion wing has no jurisdiction in the case of person and simply remanded the matter to the regular assessing authority.
- iii) Whether section 3(2)(b) of the Act of 1988 does not mutatis mutandis apply on non-dealers just in the same manner in which they apply to the dealer.
- iv) Whether the anti Evasion Officers do not have the jurisdiction by virtue of section 3(2)(b), 6 & 7 of the Act of 1988 read with the provision of the Rajasthan Sales Tax Act to check the vehicles and realize the tax with a view to avoiding the tax evasion.
- v) Whether the view taken by the learned Dy. Commissioner (Appeals) as upheld by the learned Tax Board that the Anti

Evasion authorities did not have any jurisdiction over the “persons” but would have jurisdiction only on “dealers” as per the notification No.3(a)(9)Jurs/Tax/CCT/97-1 dated 1.4.1997 issued by the Commissioner, Commercial Taxes and, therefore, the assessment order passed in the present matter would be a “nullity”, is legally sustainable.

vi) Whether in the facts and circumstances of the matter, the Rajasthan Tax Board was justified in accepting the appeal filed by the respondent without appreciating the provisions of section 84 of the RST Act, 1994.”

2. The brief facts noticed are that some of the respondents are regular assessees under the sales tax laws and few others are individuals who had purchased motor vehicles from the dealers from outside the State of Rajasthan but the vehicles were intended for being used by them in the State of Rajasthan. It has been held by the Assessing Officer that on verification of the information gathered from the Regional Transport Officer and on verification of declaration form ET-1 it was noticed that though the vehicles were purchased from outside the State of Rajasthan but brought into the State of Rajasthan without the declaration form ET-1 which according to the Assessing Officer was mandatory to be filled in and filed and non filing is in violation of the provisions laid down under the Rajasthan Tax on Entry of Motor Vehicles Into Local Area Act. Accordingly, notice was issued, the respondents did file reply, inter alia, stating that they paid the tax in other State and when they had paid the road tax of the State, any other tax was not required to be paid. They also contended that they were not aware of declaration form ET-1 and had they been made aware there was no difficulty in filing the declaration form. However, the Assessing Officer was not satisfied with the explanation so offered and in the light of

judgment rendered by the Division Bench of this Court in M/s. *Ashapura Oil Centre v. State of Rajasthan & Another* 2000 (2) WLN 408, held that tax was required to be levied and so also penalty and interest, which according to the Assessing Officer was mandatory. The matter was carried in appeal before the Dy. Commissioner (Appeals), who vide order dated 24.1.2004 while upholding the finding of the Assessing Officer, but came to the conclusion that the Assistant Commissioner, Commercial Tax Department, Anti Evasion Wing had no jurisdiction to pass the assessment order and remitted/remanded the matter to the appropriate Commercial Tax Officer who had jurisdiction to pass assessment order.

3. Both the Revenue as well as the assessees assailed the order of Dy. Commissioner(Appeals). While the contention of the Revenue was that the order passed by the Anti Evasion Wing was just and proper, however, the claim of the respondent-assessee was that once the Anti Evasion Wing has no jurisdiction, therefore, no order could have been passed and the said order by the Assessing Officer was a nullity. The Tax Board accepted the contention raised on behalf of the assessee and quashed the assessment order itself holding that the authority who had passed assessment order had no jurisdiction.

4. Learned counsel for the Revenue drew attention of this court to the salient features under the Rajasthan Tax on Entry of Motor Vehicles Into Local Area Act, especially Section 2(1)(c), (e), (g), Section 3, Section 6(2), Section 7 and also Rule 4 of the Rules. She contended that the Tax Board was unjustified in holding that once an order was passed by the Anti

Evasion Officer, the order itself was bad in law, particularly in view of Section 6(2) and 7 where it clearly specifies that all provisions relating to assessment, reassessment collection to enforce payment of tax offences and penalty including interest of the Rajasthan Sales Tax Act, 1954 shall mutatis mutandis apply in relation to the assessment/reassessment, collection and enforcement of payment of tax required to be collected under this Act, and contended that when all the provisions of the Rajasthan Sales Tax Act are by and large applicable, and the Assessing Officers have power to make an assessment, if the provisions of the Act have been violated, then the very purpose of enacting the law has been defeated by the Tax Board which could not have been the purpose of the Act. She contended that the vehicles are being purchased outside the State of Rajasthan where the incidence of tax is lower and brought into the State by the respondent-assessee to evade the taxes and the Revenue of the State suffers, though the vehicles are intended to be used for all times to come for personal use in the State of Rajasthan for all practical purposes, but due tax under the Act has not been paid. She contended that this Act was introduced for this purpose only as vehicles were purchased outside Rajasthan were brought in the State of Rajasthan were used in the State but no payment of tax was made, and thus contended that the order of Assessing Officer was just and proper. Alternatively she contended that if at all the Anti Evasion Officer had no jurisdiction the assessment ought not to have been quashed but could have been remanded to the Officer having correct jurisdiction over the assessee and not to quash and set aside the order itself. She relied upon the judgment

of this court in the case of Ashapura Oil Centre v. State of Rajasthan (supra).

5. Per contra, learned counsel for the respondent-assesseees jointly contended that the very levy of tax was contrary to the Act. The respondents paid due tax and were not required to pay any other tax in addition to what had been paid by them. They further contended that the provisions of the Act cannot be imposed on the assessee merely because Form ET-1 was not submitted and contended that when the Anti Evasion Wing had no jurisdiction to pass an assessment order, the Tax Board has come to a correct conclusion and had rightly quashed the assessment as once there is no power to assess and when there is no jurisdiction to assess by the Assistant Commissioner, Commercial Tax Department, Anti Evasion Wing, the order is just and proper and is not required to be interfered with.

6. I have considered the arguments advanced by the counsel for the parties and have perused the impugned order.

7. On analysing the provisions contained under the Act of 1988 vis-a-vis the provisions as contained under the Rajasthan Sales Tax Act, 1994, when all the provisions of the Rajasthan Sales Tax Act applies to the instant Act mutatis mutandis insofar as the assessment and other provisions are contained, certainly some officer gets power to assess, reassess and to determine tax, interest and penalty under the Act. It would be appropriate to refer to some of the provisions contained in the instant Act :-

“Sec. 2(c): “importer” means a person who, in any capacity brings or causes to be brought a motor vehicle into a local area from any place outside the State but not being a place outside the territory of

the Union of India for use or sale therein;

Sec. 2(d): “local area” means the area within the limits of,- (i) a panchayat established under the Rajasthan Panchayat Act, 1953 (Act No.21 of 1953); or (ii) a municipality established under the Rajasthan Municipalities Act, 1959 (Act No.38 of 1959); or (iii) a notified area committee or a cantonment board constituted or established under any law for the time being in force;

Sec. 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 cycles, 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;

Sec. 2(f): “person” includes any company or association or body of individuals, whether incorporated or not, and also a Hindu Undivided Family, a firm, a local authority, the Government of any State or Union Territory;

Sec. 3: Incidence of Tax. - (1) There shall be levied and collected a tax on the purchase value of a motor vehicle, an entry of which is effected into a local area for use or sale therein and which is liable for registration in the State under the Motor Vehicles Act, 1939 (Central Act 4 of 1939), at such rate or rates as may be notified by the State Government from time to time but not exceeding the rates notified for motor vehicles under section 5 of the RST Act, 1954 (Rajasthan Act 29 of 1954) or fifteen per cent of the purchase value of a motor vehicle, whichever is less:

Provided that no tax shall be levied and collected in respect of a motor vehicle which was registered in any Union Territory or any other State under the Motor Vehicles Act, 1939 (Central Act 4 of 1939) for a period of fifteen months or more before the date on which it is liable to be registered in the State under the said Act.

(2) The tax shall be payable by an importer,- (a) if he is a dealer registered or liable to be registered under the provisions of the RST Act, 1954 (Act No.29 of 1954), in the manner and within the time as tax on sales is payable by him under the said Act; and (b) if he is a person not covered by clause (a), on the date of entry of the motor vehicle into the local area, to the incharge of the entry checkpost or the Commercial Taxes Officer of the area where he ordinarily resides or carries on any business or provides any service, and the provisions of the RST Act, 1954 (Act No.29 of 1954) as applicable to a registered dealer or casual trader shall, mutatis mutandis, apply to such dealer or, as the case may be, such

person.

(3) The tax shall be in addition to the tax levied and collected as octroi by any local authority within its local area.

Sec. 6: Offences and penalties.- (1) Where any person liable to pay tax under this Act fails to comply with any of the provisions of the Act or rules made thereunder, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding fifty per cent of the amount of tax.

(2) Subject to the provisions of this Act, all the provisions relating to offences and penalties, including interest, of the RST Act, 1954 (Act No.29 of 1954) shall mutatis mutandis, apply in relation to the assessment, reassessment, collection and enforcement of payment of tax required to be collected under this Act or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under the said Act.

Sec. 7: Applicability of the provisions of the RST Act, 1954 (Act No.29 of 1954) and the rules made thereunder.- Subject to the provisions of this Act and the rules made thereunder, the authorities empowered to assess, reassess, collect and enforce payment of tax under the RST Act, 1954 (Act No.29 of 1954) shall assess, reassess, collect and enforce payment of tax including penalty or interest payable by an importer under this Act as if the tax, penalty or interest were payable under the said Act, and for this purpose they may exercise all or any of the powers assigned to them under the said Act and all the provisions of the said Act and the rules made thereunder for the time being in force including the provisions relating to returns, advance payment of tax, provisional assessments, recovery of tax, appeals, rebates, penalties, interest, compounding of offences and other miscellaneous matters shall, mutatis mutandis, apply.”

Rule 4 of the Rajasthan Tax On Entry Of Motor Vehicles Into Local Areas

Rules, 1992:

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“Furnishing of Declaration.- (1) A person who wants to import a motor vehicle for his personal use, may obtain a blank declaration Form ET-1 on application on simple paper to the Commercial Taxes Officer concerned of the area where he ordinarily resides on the payment of a fee of Rupees ten for each form. The counterfoil of the declaration form shall be retained by such person and its portions marked original and duplicate shall be produced before

the officer in charge of the entry Check-post, who shall retain such original portion and return such duplicate portion duly sealed in token of having verified it to the person producing it.

(2) Any person obtaining Form ET-1 under sub-rule (1) shall not in any manner transfer it to any person for use under the said sub-rule or shall not authorise any other person for such use on his behalf.

(3) If any Form ET-1 obtained under sub-rule (1) is lost, destroyed or stolen, the person concerned shall immediately report in writing in this behalf to the officer from whom such form was obtained.

(4) The application to obtain Form ET-1 under sub-rule (1) shall be rejected if the Commercial Taxes Officer is satisfied that such form is not required for his bonafide personal use.”

8. On conjoint reading of the above provisions and rules it clearly postulates that if a vehicle enters into the State of Rajasthan which is intended for being used in the State of Rajasthan, then one is required to pay tax on entry of motor vehicles as prescribed under the Act, an “importer” has been defined to mean a person who brings or causes to be brought a motor vehicle into a local area from any place outside the State. “Local Area” has also been defined to mean which extends to Panchayat, Municipality etc. “Motor Vehicle” includes motor cars, motor taxi cabs, motor cycles, motor cycle combinations, etc.. “Person” includes any company or association or body of individuals, whether incorporated or not, and also a Hindu Undivided Family, a firm, a local authority the Government of any State or Union Territory. Sec. 3(2)(b) as quoted hereinabove prescribes that the person who brings in vehicle is required to be assessed by the CTO of the area where one ordinarily resides or carries on any business or provides any service. Sec. 7 prescribes that the authorities empowered to assess, reassess, collect and enforce payment of tax under the RST Act, 1954 has been given the same powers to assess,

reassess, collect and enforce payment of tax including penalty or interest payable by an “importer” under this Act and all the provisions relating to returns, advance payment of tax, provisional assessments, recovery of tax, appeals, rebates, penalties, interest, compounding of offences and other miscellaneous matters shall, mutatis mutandis, apply to these proceedings. Rule 4 prescribes that if a person desirous to “import” a vehicle for his personal use, can obtain a blank declaration form ET-1 on a simple application to the CTO concerned of the area where one resides, and as rightly observed by the Assessing Officer, in all these cases the respondent-assessee failed to furnish declaration form ET-1 and to pay the tax which was mandatory for a person importing the vehicle in the State of Rajasthan and was required to pay the tax as prescribed under this Act. In my view, once the finding recorded by the Assessing Officer after having information gathered from the Regional Transport Authority that the “importer” (assessee) has not furnished declaration form ET-1, in my view the Assessing Officer got right to assess the assessee and to levy tax under the instant Act.

9. The Hon'ble Division Bench of this Court in the case of Ashapura Oil Centre v. State of Rajasthan (supra) had an occasion to consider similar issue raised in the instant matter. It would be relevant to quote paras 21 to 24 of the said judgment :-

“21. What is required is that the vehicle on which the levy is to be imposed should be the vehicle imported. In the instant case, the motor vehicles in question which is the subject matter of levy were admittedly imported by the assessee. Therefore, the case law relied upon by the assessee is of no assistance to them and

the incidence of tax as provided in Section 3 of the Act is attracted towards the assessees.

22. Coming to the question of implication of Section 4 of the Act which deals with the reduction of tax liability, it can be observed that Section 4(2) is attracted only when the conditions, as prescribed, have been followed by the persons claiming reduction. In the instant case, the conditions have been prescribed under the Rules of 1992. The conditions having been prescribed the assessee cannot say that he was not bound by those conditions. No refuse can be taken by the assessees that the checkposts are not there. The assessees could have submitted the Form ET-1 to the Commercial Taxes Officer. In any case, the assessees could have at least obtained it as provided under the Rules. Having not applied and obtained it cannot be said that the assessees were right in claiming that they have fulfilled the prescribed conditions. That being the position, the reduction claimed by the assessees in the writ petition under Section 4(2) of the Act is not applicable to them.

Another aspect regarding reduction is that it could be made available if applied. Admittedly, the Commercial Taxes Officer was not moved for it. If the petitioners have not asked for reduction from the Commercial Taxes Officer, then raising a plea in writ petition is an attempt of over reaching.

The argument of the learned counsel for the assessees that the Rules have come into being in the year 1992, therefore, the Rules cannot be held mandatory is groundless. Suffice it to say that the language of the Rules and the Act does not make it directory and, therefore, we are not prepared to agree with the argument raised by the learned counsel for the assessees.

23. Then, comes the question of penalty and interest. Both the parties have relied upon *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra* [1975 35 S.T.C. 571].

To appreciate the contention of the parties, we reproduce Section 6 of the Act:

6. Offences and penalties: (1) Where any person liable to pay tax under this Act fails to comply with any of the provisions of the Act or rules made thereunder, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding fifty per cent of the amount of tax.

(2) Subject to the provisions of this Act, all the provisions relating to offences and penalties including interest, of the RST Act, 1954 (Act No.29 of 1854) shall mutatis mutandis, apply in relation to the assessment, reassessment, collection and

enforcement of payment of tax required to be collected under this Act or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under the said Act.

Penalty is clearly provided directly under Section 6(1) of the Act. Under Section 6(2) of the Act, interest has been provided by substitution of the Rajasthan Sales Tax Act. When one Statute makes a reference to another Act, then it cannot be said that provision of that Act cannot be read into it. When provision of Rajasthan Sales Tax Act are read, we find that the liability of interest is provided for. The ratio of Khemka & Co. (Agencies) Pvt. Ltd.'s case (*supra*) supports our finding.

24. The only relief granted to the assessees was to the extent of interest. We do not think that the judgment of the learned Single Judge can be sustained. Consequently, on the question of chargeability of interest from the Assessee, the judgment of the learned Single Judge is to be set aside. It is observed that the respondent-Department had a right to claim interest from the assessees. We have already found out that the assessees are liable to pay tax. No reduction can be claimed by them. They are liable to pay penalty and interest. These findings result into the total negation of relief to the assessees in the writ petition.”

10. Taking into consideration the salient provisions of the Act noted and analysed earlier including Sections 6 and 7, and so also Rule 4, and considering the judgment of the Division Bench of this court in the case of Ashapura Oil Centre (*supra*), I am of the view that when one statute make a reference to another Act then it cannot be said that provision of that Act cannot be read into it, and as observed earlier when all the provisions of Rajasthan Sales Tax Act, 1954 are made applicable mutatis mutandis to the provisions under the Act, therefore, the assessment order passed by the Assistant Commissioner, Anti Evasion Wing, though may not be proper but the entire assessment order could not have been quashed and set aside for all times to come. At least when liability under the Act is fastened on an assessee who imports vehicle into the State of Rajasthan for personal use

and such intention is to use the vehicle for all times to come, the provisions of the Act cannot be made redundant as held by the Tax Board that the Assistant Commissioner, Anti Evasion Wing had no jurisdiction. It may be that the Assistant Commissioner, Anti Evasion Wing had no jurisdiction but that may not be sufficient to quash and set aside the assessment for all times to come making the Revenue remediless of levying just and proper tax which is due against the person who imports a vehicle in violation of the provisions of the Act. In my view the Tax Board has taken a too technical and a liberal view of quashing the assessment proceedings, which in my view is unjust and improper. Even the Division Bench of this court (supra) had come to the conclusion that not only tax but penalty and interest is also leivable once provisions of the Act are attracted and violated. The judgment of the Division Bench in the case of Ashapura Oil Centre (supra) was duly considered by the Assessing Officer as well as the Dy. Commissioner (Appeals), however the Tax Board for the reasons best known to it has not at all referred to and has not considered the judgment of the Division Bench (supra) which ought to have been considered by the Tax Board as it is the final fact finding authority.

11. Having held so, in my view the CTO under Section 3(2)(b) had the jurisdiction to assess the assessee according to the area where one ordinarily resides or carries on business or provides any service, therefore, in the instant case assessment will have to be passed by the CTO in accordance with the place of residence or the place of business or place of providing service. In case the respondent-assessee is already assessed to tax by a

particular CTO, the same officer would have jurisdiction to assess the assessee and in case some of the assessees are not assessed to sales tax, then the CTO will get jurisdiction to assess according to the place of residence of the person.

12. In the light of the above, the order of the Tax Board is quashed and set aside, the order of Dy. Commissioner(Appeals) insofar as direction to assess the assessee by the Assessing Officer (CTO) having jurisdiction, as above, is upheld. Accordingly, the Assessing Officer having jurisdiction will assess the assessee in this regard. Since considerable time of over a decade has been passed, let endeavour be made by the CTO having jurisdiction to assess the assessee expeditiously and within a period of six months from the date certified copy of the order is placed before it. Counsel for the Revenue may also send a copy of this order to the Commissioner, Commercial Taxes Department, Rajasthan, Jaipur, who may transfer all the cases to the Assessing Officer having jurisdiction to assess the assessee-respondents as aforesaid to avoid further delay. An additional copy will be sent by the Registry to the Commissioner, Commercial Taxes Department, Rajasthan, Jaipur separately.

13. Petitions succeed and are allowed on the above terms. No costs.

(J.K. Ranka) J.

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[All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.]
Deepankar Bhattacharya
PS