

Part-heard

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3402 OF 2001

ASSTT. COMMERCIAL TAXES OFFICER
Appellant

(s)

VERSUS

M/S SURYAPRAKASH DWARKA PRASAD
t(s)

Respondent

(with office report)

Date: 26/04/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. Sushil Kr. Jain, Adv.

Mr. Punit Jain, Adv.

Mr. H.D. Thanvi, Adv.

Mr. Sarad Singhania, Adv.

For Respondent(s)

RR-Ex-Parte

UPON hearing counsel the Court made the following

O R D E R

The Appeal is dismissed. No costs.

(Parveen Kr. Chawla)

(Radha R. Bhatia)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3402 OF 2001

ASSTT.COMMERCIAL TAXES OFFICER

..APPELLANT

VERSUS

M/S SURYAPRAKASH DWARKA PRASAD

..RESPONDENT

O R D E R

On 15.10.1992, one truck of Balaji Golden Transport Company was

checked by the Assistant Commercial Taxes Officer, Rajasthan near Udaipur and

the same was unloaded at the godown of the transport company. In the vehicle,

352 cartons of match boxes were being transported from Ahmedabad. Bills,

bully etc. by the consignor to the consignee were there but the declaration form

i.e. Form ST-18A was not available with the driver. The assessing authority

imposed a penalty of Rs.8,135/- on the ground that on the bills, built, there

was no seal of the check post at the time of entry in the State of Rajasthan and

that the goods were not accompanied by the declaration form i.e. Form ST-18A.

Aggrieved against the aforesaid order, the respondent-assessee filed an appeal before the Deputy Commissioner(Appeals), Commercial Taxes Department,

Udaipur (Rajasthan). Appellate authority accepted the appeal and held that the

bills and built of the goods and information regarding consignor and consignee

was also available. Under the circumstances, the inquiry should have been held

by the assessing authority before imposing the penalty under Section 22A(7) of

the Rajasthan Sales Tax Act, 1954 (for short 'the Act'). That there was no

intention on the part of the assessee to evade the tax, therefore, a case for

imposing penalty was not made out.

Aggrieved against the order of the appellate authority. the department

filed further appeal before the Rajasthan Tax Board, Ajmer (for short 'the Board').

The Board, after hearing the counsel for the parties, dismissed the appeal by

observing :

"5. I have heard the arguments of the parties and perused the available records. That in reality the goods which was checked in this case was checked on the transport company and that at the time of checking all the documents i.e. bill, bilty and challan etc. were available. That the Declaration Form S.T. 18A was not there. The main objective of the section 22A(7) of the Act was to prohibit the evasion of tax. That if the assessee is found guilty of tax evasion then only the penalty could be attracted. In this case the Tax Assessing Authority has no where tried to prove the intention of tax-evasion on the part of the assessee before the imposition of the penalty. That apart from this it is also clear in view of the judgments of the Hon'ble Supreme Court that for the purpose of controlling the evasion of tax it is essential to have the Declaration S.T. 18A Form. But on the basis of the other documents also it can be discerned as to whether the assessee is guilty of the evasion of tax or not. Therefore, in this case no error has been made by the learned appellate authority in setting aside the penalty. That on the basis of the facts there does not seem to be any fault on the part of the assessee."

Aggrieved by the order passed by the Board, the department file
d a

Statutory Revision Petition in the High Court of Rajasthan which was numbered as

S.B.Civil Sales Tax Rev. Petition No. 620 of 1999. The High Court has dismissed

the Revision, aggrieved against which the present appeal by grant of special leave

has been filed.

Section 22A(7) of the Act contemplates the holding of an inquiry and

giving of a reasonable opportunity to the assessee before imposition of the penalty

for possession of goods not covered by goods vehicle record and other documents

prescribed under sub-section (3) or for submission of false declaration or

documents.

It was concluded by the appellate authority that bills, builty and challan

were there; information regarding consignor and consignee was also there and

when the information regarding consignor and consignee was there then the

inquiry should have been initiated before the imposition of the penalty. Since no

inquiry was held, the penalty could not be imposed.

In the peculiar facts and circumstances of this case, we are not inclined

to interfere with the orders passed by the High Court as well as Board and the

appellate authority and dismiss the appeal leaving the questions of law open. No

costs.

.....J.

[ASHOK BHAN]

NEW DELHI;J.

APRIL 26, 2006. [LOKESHWAR SINGH PANTA]