

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

Petition(s) for Special Leave to Appeal (Civil) No(s).21170/2003

(From the judgement and order dated 04/02/2003 in DBCSA No. 73/2003 of The HIGH COURT OF RAJASTHAN AT JODHPUR)

STATE OF RAJASTHAN AND ANR.

Petitioner(s)

VERSUS

M/S. KEDAR DAS SURENDRA KUMAR

Respondent(s)

(With prayer for interim relief and office report)
(For FD)

Date: 13/05/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s) Mr. Pradeep Agarwal,Adv.
Mr. H.D.Thanvi,adv.
Mr. A.P.Dhamija,adv.
Mr. Punit Jain,adv.
Mr. Sarad Singhania,adv.
Mr. Sushil Kumar Jain,Adv.

For Respondent(s) Mr.Manish Singhvi,adv.
Mr. P.V. Yogeswaran,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is disposed of.

[SUMAN WADHWA]
COURT MASTER

[MADHU SAXENA]
COURT MASTER

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2005
(Arising out of SLP(C)No. 21170/2003)

State of Rajasthan and Anr. .. Appellants

vs.

M/s. Kedar Das Surendra Kumar .. Respondent

O R D E R

Leave granted.

The respondent was transporting dry fruits between Delhi to Pali in Jodhpur. The respondent's truck in which its goods were carried was intercepted and twelve packets were seized. Notices under Sec.78 (4) and Section 83(1) of the Rajasthan Sales tax Act, 1994, were issued. After hearing the parties, the Assistant Commercial Tax Officer (ACTO) raised a demand for Rs.38,939/- by way of penalty and also directed the release of the goods. However, it was stated that if the goods were spoiled for any reason, then there was no liability of the State Government.

The respondent filed an appeal challenging this order of the Assistant Commercial Tax Officer. While the appeal was pending, the respondent also filed a writ petition. It was submitted before the learned Single Judge by the respondent that by

-2-

issuing a notice under Sec.83(1), the appellants had opted for purchasing the goods but no payment had been made till date. The writ petition was disposed of on the basis of agreement of counsel for the State that steps would be taken to make payment, as provided under Sec.83 of the Act. However, it was

submitted that the payment would be made after the State adjusted the penalty which had been levied on the respondent.

Despite having agreed before the learned Single Judge, the appellants preferred an appeal before the Division Bench. The Division Bench noted that the order impugned before it had been agreed to by the counsel for the appellants. It was also held that the proceedings under Sec.78 of the Act were separate from the proceedings under Sec.83 and that once the notice under Sec.83(1) was issued, it was obligatory on the part of the Assistant Commercial Tax Officer to make payment of the articles seized.

The Division Bench accordingly dismissed the appeal of the appellants and reaffirmed the Single Judge's order while directing payment to be made under Sec.83(1) of the Act. However, it went further and directed that the State could recover the amount of the purchase price of the goods from the Assistant Commercial Tax Officer who had issued the notice under Sec.83(1) of the Act.

-3-

Learned counsel on behalf of the appellants has reiterated the same submissions as had been taken before the Division Bench, namely, that the appeal was pending from the order of the Assistant Commercial Tax Officer. However, admittedly there was no stay of the order of the ACTO by the Appellate Authority. Therefore, in terms of Sec.83(2) of the Act, as it then stood, the dealer was bound to sell the goods to ACTO. This implies a mandatory

obligation on the part of the ACTO to purchase the same. It is to be noted that under Sec.83(2) as it then stood, that if the dealer did not deliver the goods for the purpose of effecting such sale, he would be liable to further penalty.

In the circumstances, the High Court was wholly correct in directing the appellants to make payment of the purchase price as determined for the purpose of levy of penalty by the appellants to the respondent. It is true that the appeal is pending. But in the circumstances of the case that must be limited only to the question to levy of the penalty under Sec.78(5) of the Act. It is made clear that while making the payment, the appellants would be

-4-

entitled to set apart the quantum of the penalty as determined on the basis of purchase price which would be subject to the outcome of the appeal before the Appellate Authority. The direction of the High Court giving liberty to the State Government to recover the purchase price from the ACTO personally is set aside. In view of this order, the respondent's appeal before the Appellate Authority regarding Sec.83 has necessarily become infructuous. However, the appeal relating to Sec.78(5) proceedings will continue.

The appeal is disposed of.

.....J.
(RUMA PAL)

.....J.
(C.K.THAKKER)

New Delhi;
May 13, 2005.