

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 246 OF 2012
(@ SPECIAL LEAVE PETITION(C)NO.7101 OF 2010)

ASSISTANT COMMERCIAL TAX OFFICER

APPELLANT

VERSUS

M/S ROMESH POWER PRODUCTS P.LTD.

RESPONDENT

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order dated 29.06.2009 passed by the High Court of Judicature for Rajasthan at Jaipur Bench in S.B.Sales Tax Revision Petition Civil No.139 of 2009.

3. The Revenue, being aggrieved by the orders passed by the Revenue Appellate Tribunal, Jaipur, had approached the High Court in S.B.Sales Tax Revision Petition Civil No.139 of 2009.

4. The High Court has disposed of the Revision Petition only on the ground that the Check-Post Authority had levied penalty on the owner of the goods at the time of checking of the vehicle.

5. Dr.Manish Singhvi, learned counsel for the appellant would contend that the reasoning of the High Court is : 2 : opposed to the observation made by this Court in the case of Asst.Commercial Taxes Officer Vs. Bajaj Electricals Ltd. (2009)1 SCC p.308.

6. In the aforesaid said decision, this Court has observed:

"28. If one reads sub-section (5) of Section 78 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 is 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. In this connection it may be noted that sub-section (5) comes after sub-section (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 owner. Moreover, under Section 78(2) the words used are "person in charge of vehicle or carrier of goods in movement" whereas the words in Section 78(5) which comes after sub-section (4) refer to "person in charge of the goods".

The words "in movement" do not find place in Section 78(5) and therefore, the expression "person in charge of goods" 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".

7. We are in agreement with the decisions of this Court. In view of the conclusions reached by this Court in the above case, the High Court was not justified in observing that since the penalty has been levied only against the owner of the vehicle and not against the person in-charge of the vehicle and, therefore, the judgment of the High Court cannot be sustained.

8. In the result, the appeal is allowed, the order passed by the High Court is set aside and the order passed by the Check-Post Authority is confirmed.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
JANUARY 09, 2012
ITEM NO.39

COURT NO.11

SECTION III

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).7101/2010

(From the judgement and order dated 29/06/2009 in STR No.139/2009 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

ASSISTANT COMMERCIAL TAX OFFICER

Petitioner(s)

VERSUS

M/S ROMESH POWER PRODUCTS P.LTD.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim relief)

Date: 09/01/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s) Dr.Manish Singhvi, AAG
for Mr. Irshad Ahmad,Adv.

For Respondent(s) Mr.Ram Niwas, Adv.
for Ms. N.Annapoorani,Adv.

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

Leave granted.

The appeal is allowed, in terms of the signed order.

(G.V.Ramana)
Court Master

(Sharda Kapoor)
Court Master

(signed order is placed on the file)