

A ASSISTANT COMMISSIONER ANTI EVASION COMMERCIAL TAXES,
BHARATPUR

v
M/S. AMTEK INDIA LIMITED

FEBRUARY 22, 2007

B

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C *Rajasthan Sales Tax Act, 1994—Section 78(5)—Penalty imposed on consignee by Assessing Authority for producing non-genuine documents—High Court holding the transactions genuine and held the Assessing Officer cannot take plea of good faith and imposed cost to be paid personally by the Officer—On appeal held: Assessing Officer overlooked the documents produced and held that there was manipulation without any reasonable basis, thus, its action was not justified—However, cost imposed set aside.*

D

Words and Phrases: 'Good Faith'—Meaning of.

E Respondent-assessee purchased certain goods from the consignors. Vehicle of the assessee was checked and the Assessing Authority held the documents produced as not genuine since the date of invoice and the delivery challan was different and imposed penalty under section 78(5) of the Rajasthan Sales Tax Act, 1994. It was assessee's case that the goods were purchased under invoice in which the seller charged excise duty and Central sales tax though they received the goods after one year. Appellate Authorities set aside the penalty. Revenue filed Revision Petition. High Court dismissed the petition and imposed cost on the Assessing Officer. It held that the transit and transactions were perfectly genuine; that the action of the authorities cannot be countenanced; and that they cannot take the plea of good faith which was not established. Hence the present appeal.

F

Disposing of the appeal, the Court

G

HELD: 1.1. Whether an act has been done in good faith would depend upon the factual scenario. In order to establish "good faith", it has to be established that what has been imputed concerning the person claiming it to be so, is true. Anything done with due care and attention, which is not *mala*

H

fide is presumed to have been done in 'good faith'. (Paras 10 and 12) A

1.2. In the instant case, though the action of the Assessing Officer, in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. This is a case where the officer should have been more careful and should not have acted in a manner as if he was a bloodhound and not a watchdog of revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of revenue. Therefore, while holding that the action of the Assessing Authority was clearly unjustified, direction for imposition of cost is set aside. [Paras 16 and 17] [1095-G; 1096-A] B C

Deena v. Bharat Singh, [2002] 6 Supreme Court 336, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 896 of 2007.

From the Judgment and final Order dated 3.5.2006 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in SB Sales Tax Revision Petition No. 12 of 2006. D

Sushil Kumar Jain, Puneet Jain, Chrishti Jain, Sarad Singhanian, H.D. Thanvi and Rani Maheshwari for the Appellant.

The Judgment of the Court was delivered by E

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court at Jaipur. By the impugned order the High Court dismissed the revision petition, filed by the appellant, and imposed cost of Rs.5,000/- to be paid personally by the Commercial Tax Officer, Anti Evasion, Bharatpur who passed the assessment order dated 14.9.2001. F

3. Background facts in a nutshell are as follows:

Penalty under Section 78(5) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as the 'Act') was imposed on the respondent (hereinafter referred to as the 'assessee') on the ground that at the time of checking of vehicle on 7.9.2001, the documents produced showed that bill No.155 dated 29.9.2000 of M/s. Georg Fischer Disa Limited, Satyamangala Industrial Area, G

H

A Tumkur, Karnataka raised on the respondent-assessee M/s. Amtek India Ltd.,
B Biwadi along with delivery challan No. 5259 dated 3.9.2001 form No. ST-18A
in which invoice No.155 was also mentioned and form No.ST -39 prescribed
under Karnataka Sales Tax Act and bilty of North Eastern Carrying Corporation
accompanying the said goods were produced for verification. However, date
of the said invoice No.155 dated 16.2.2000, was held to be of an earlier point
of time than the date mentioned in the delivery challan of 3.9.2001. Therefore,
the Assessing Authority held that said document was doubtful and there was
non-compliance with Section 78(2)(a) of the Act, and imposed the penalty of
Rs.1,36,200/- @ 30% of value of goods on the respondent-assessee, the
consignee or purchaser.

C 4. According to the assessee, plant and machinery and equipments
purchased by respondent-assessee from the consignor though purchased
under invoice No.155 dated 16.2.2000 in which due excise duty and Central
Sales Tax @ 4% against C-Form was charged by the seller, but the goods were
consigned and received after the lapse of about one year.

D 5. But that cannot mean that invoice raised by seller-company was not
genuine and, therefore, the penalty was not justified.

E 6. Both the Appellate Authorities i.e. D.C. (Appeals) as well as Tax
Board found the said explanation of the assessee satisfactory and correct
and, therefore, set aside the penalty under Sec. 78(5) of the Act. The revenue
filed a revision petition before the High Court under Section 86 of the Act
on the supposed question of law arising in the matter. The High Court found
that as a matter of fact none arises.

F 7. In the Revision Petition filed, the correctness of views expressed by
the Appellate Authority i.e. the DC (Appeals) and the Tax Board were
questioned. The High Court found that all relevant documents were produced,
the declarations issued by the Sales Tax Authorities of both the States clearly
established that transit and transactions were perfectly genuine and there was
no reason for the Assessing Authority to hold the document to be non-
genuine so as to attract levy of penalty at the rate of 30% of the value of
goods under Section 38(5) of the Act. The High Court felt that the action of
the authorities cannot be countenanced and they cannot take the plea of
good faith. The alleged good faith was not established and on the contrary
the action clearly indicated that the assessing officer was bent upon levying
the demand overlooking the genuine documents. Accordingly, the revision

H

petition was dismissed and costs were imposed. A

8. Learned counsel for the appellant submitted that an error of judgment should not be treated as a *mala fide* action so as to warrant the severe criticism as done by the High Court and also to warrant imposition of cost.

9. There is no appearance on behalf of the respondent in spite of notice. B

10. Whether an act has been done in good faith would depend upon the factual scenario. In order to establish "good faith", it has to be established that what has been imputed concerning the person claiming it to be so, is true.

11. "Good Faith" according to the definition in Section 3(22) of the General Clauses Act, 1897 means a thing, which is in fact done honestly whether it is done negligently or not. C

12. Anything done with due care and attention, which is not *mala fide* is presumed to have been done in 'good faith'. D

13. "Good Faith" is defined under Section 2(h) of the Limitation Act, as 'good faith'- nothing shall be deemed to be done in good faith which is not done with due care and attention"

14. Dealing with a case under the Indian Limitation Act, 1963, this Court held that the expression 'good faith' as used in Section 14 means "exercise of due care and attention". In the context of Section 14, the expression 'good faith' qualifies prosecuting the proceeding in the court, which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. [See *Deena v. Bharat Singh*, [2002] 6 SC 336] E

15. Section 52 of the Indian Penal Code, 1860 (in short 'IPC') emphasizes due care and attention in relation to "good faith". F

16. In this case though the action of the concerned assessing officer, in overlooking the documents produced coming to the conclusion about manipulation appears to be totally uncalled for and without any reasonable basis. This is a case where the officer should have been more careful and should not have acted in a manner as if he was a bloodhound and not a watchdog of revenue. It is unfortunate that in large number of cases, orders totally bereft of rationality are being passed. They do not in any manner serve public interest, much less the interest of revenue. G

H

A 17. Therefore, while holding that the action of the Assessing Authority was clearly unjustified, we direct deletion of the direction for imposition of cost. We, however, make it clear that in future if any such action comes to the notice of the Courts/Authorities, appropriate action shall be taken in accordance with law and the observations made in this case about lack of *bona fide* shall also be a factor to be taken note of.

B 18. The appeal is accordingly disposed of.

N.J.

Appeal disposed of.