

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5734 OF 2012
(SPECIAL LEAVE PETITION(C.)NO.18404 OF 2008)**

ASST. COMMERCIAL TAXES OFFICER . . . APPELLANT

VERSUS

M/S. G.D. PHARMACEUTICALS LTD. . . . RESPONDENT

O R D E R

1. Delay condoned.
2. Leave granted.
3. We have heard learned counsel for the appellant to the *lis*.
4. This appeal is directed against the judgment and order passed by the Rajasthan High Court in S.B. Sales Tax Revision Petition No.47/2006, dated 30.04.2007.
5. The issue raised in this appeal is squarely covered by the decision of this Court in the case of State of Rajasthan & Anr. Vs. D.P.Metals, (2002)1 SCC 279. In the said decision, the Court has stated that :

“ ...

31. Such submission of false or forged documents or declaration at the check-post

or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. Hiding the truth and tendering falsehood would per se show existence of mens rea, even if required. Similarly where, despite opportunity having been granted under Section 78(5) if the requisite documents referred to in sub-clause 2(a) are not produced, even though the same should exist, would clearly prove the guilty intent. It is not possible to agree with the counsel for the respondents that breach referred to in Section 78(5) can be regarded as technical or venial. Once the ingredients of Section 78(5) are established, after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty. If by mistake some of the documents are not readily available at the time of checking, principle of natural justice may require some opportunity being given to produce the same. This provision cannot be read as to imply that the penalty of 30% is the maximum and lesser penalty can be levied. The legislature thought it fit to specify a fixed rate of penalty and not give any discretion in lowering the rate of penalty. The penalty so fixed is meant to be a deterrent and we do not see anything wrong in this. This quantum of penalty under the circumstances enumerated in Section 78(5) cannot, in our opinion, be regarded as illegal. The legislature in its wisdom has thought it appropriate to fix it at 30% of the value of goods and it had the competence to so fix. As held by this Court in *Rai Ramakrishna & Others v. The State of Bihar* [1963]50ITR171(SC) ; "The objects to be taxed so long as they happen to be within the legislative competence of the legislature can

be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19, courts would naturally be circumspect and cautious" as such there cannot, in the present case, be any valid challenge to the rate of penalty provided for in Section 78(5) of the Act. "

6. Following the aforesaid decision, the appeal is allowed and the orders passed by the First Appellate Authority Board and the High Court are set aside and the order passed by the Original Authority is restored. No costs.
7. Ordered accordingly.

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

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

NEW DELHI,
AUGUST 06, 2012.