

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.5865 OF 2008

Assistant Commercial Taxes Officer **... Appellant(s)**

versus

M/s. Bajaj Electricals Ltd. **... Respondent(s)**

J U D G M E N T

S. H. KAPADIA, J.

This civil appeal filed by the Department is directed against the judgment and order dated 1.8.07 passed by the Rajasthan High Court in S.B. Sales Tax Revision Petition No.114 of 2005 setting aside the penalty under Section 78(5) of the Rajasthan Sales Tax Act, 1994.

2. On March 30, 1999 a truck coming from Delhi was intercepted. The name of the consignor in was M/s. Navyug Appliances (India), Mayapuri, Delhi. When the vehicle was stopped for checking at the check-post the driver was directed

to produce bills, bilties, Declaration Form ST 18A for goods loaded in the vehicle. The statement of the driver was recorded. Show cause notice was issued. In reply to the show cause notice the representative of the respondent (importer) submitted that the duty for filling in the Declaration Form ST 18A was the responsibility of the transporter and the consignor and on account of mistake on the part of the transporter the said Form was not duly filled in. The A.O. came to the conclusion that goods were imported without the Declaration Form ST 18A which amounted to violation of Section 78(2)(a) of the Rajasthan Sales Tax Act, 1994 (for short, "the 1994 Act") read with Rule 53 of the Rajasthan Sales Tax Rules, 1995 (for short, "the 1995 Rules"). Hence, on the price of the goods of Rs.2,85,000/-, penalty at the rate of 30% to the tune of Rs.85,500/- came to be imposed.

3. Aggrieved by the decision of the A.O. imposing penalty, the respondent carried the matter in appeal to Dy. Commissioner (A). Before the Appellate Authority it was contended on behalf of the respondent that the Declaration

Form relating to the goods was sent to the consignor but through oversight it was left behind and therefore there was no intention to evade the tax and that the decision of the A.O. to impose penalty for not carrying Declaration Form ST 18A with the goods was erroneous and unjustified, particularly, when bilty, invoice etc. were there when the vehicle was intercepted. Thus, blame was put on the consignor/transporter. Moreover, during the course of hearing the respondent had produced the Declaration Form ST 18A and it was contended that in view of Declaration Form since produced, the judgment of this Court in the case of **State of Rajasthan and Another v. D.P. Metals – (2002) 1 SCC 279** stood complied with. The arguments of the respondent were rejected by the Commissioner (A) who came to the conclusion that the above contentions advanced by the respondent were merely excuses as neither in the reply to the show cause notice nor in the enquiry before the AO the respondent ever produce the said Form ST 18A and that the subsequent production of the form was an after-thought. The Appellate Authority further found that there was no affidavit from the

transporter owning up the said mistake. For the above reasons, the Appellate Authority refused to interfere with the penalty order passed by the A.O.

4. Aggrieved by the said decision of the First Appellate Authority, respondent herein moved to Rajasthan Tax Board in Appeal No.326 of 2004. Before the Board, respondent contended that it had sent the Declaration Form ST 18A to the consignor but due to mistake of the transporter who failed to tag the said Declaration Form with the documents, a mistake had crept in. It was urged that there was no intention of evasion of tax. It was also argued that the cause of action in the present matter arose on 30.3.1999, i.e., prior to 22.3.2002 when Section 78(5) stood substituted, hence penalty under the amended Section 78(5) could not have been imposed against the owner of the goods. The Board came to the conclusion that the case arose prior to 22.3.2002 and consequently imposition of penalty against the owner was illegal. On that point alone the Board set aside the penalty

and allowed the appeal filed by the assessee. The Board did not examine the merits of the case.

5. Aggrieved by the decision of the Board, the Department preferred S.B. Sales Tax Revision Petition No.114 of 2005 before the Rajasthan High Court which took the view that since the bill and bilty were found along with the goods at the time of checking and since the said Declaration Form was sent by the consignor to the transporter but on account of *bona fide* mistake of the transporter the same was left out, it could not be said that there was any intention to evade tax. Accordingly, the High Court confirmed the decision of the Rajasthan Tax Board. Hence, this civil appeal by the Department.

6. As a matter of preface, we may state that we have come across number of matters where the Department has sought to impose penalty under Section 78(2) read with Section 78(5) of the said 1994 Act. It appears that in large number of cases evasion has taken place on account of the importer's (consignee's) failure to fill in Declaration Form ST 18A.

Moreover, in all these cases we found that when scrutiny takes place Declaration Form(s) is sought to be produced after incorporating the details required to be given in that Form. In all these cases, Declaration Forms are duly signed but important columns are left blank. Those columns are filled in either when scrutiny begins or at the stage of investigation/enquiry. It is important to note that these Declaration Forms are similar to Returns under Income-tax Act. We are not on the veracity of the contents of that Form. Our preface is confined to the importer's (consignee's) refusing to supply particulars which they are required to give in the Declaration Form(s). We have come across numerous cases where columns are left blank. The Forms are duly signed. However, relevant columns are left blank. It is important to note the significance of Declaration Form ST 18A. The said Form is in two parts. In one part information is required to be given by the consignee, in the other part details have to be given by the consignor, however, it is the responsibility of the consignee to see that the consignor supplies the requisite information. The quantum of taxable turnover is dependent

on the declaration made by the consignee in Declaration Form ST 18A. We regret to say that hundreds of such cases are arising each year under the said 1994 Act. It appears that the State is losing revenue on account of the consignee's failure to supply particulars in the prescribed Declaration Form. This is one such case.

7. In the case of **M/s. Guljag Industries v. Commercial Taxes Officer – (2007) 7 SCC 269**, this Court has interpreted Section 78(2) of the 1994 Act and Section 78(5) thereof. In that case a vehicle was checked in which certain goods were being transported from a place in Andhra Pradesh. The goods were accompanied by outward gate pass and invoice which indicated the name of the consignor and the consignee. Along with the said goods Form ST 18A was also found. That form was duly signed, however, it did not indicate the description of the goods transported. Therefore, the A.O. held that there was contravention of the provision of Section 22A(3) of the Rajasthan Sales Tax Act, 1954 (for short, "the 1954 Act"). He accordingly issued show cause notice to the appellant under

Section 22A(7) to show cause why penalty should not be imposed for violation of Section 22A(3) of the 1954 Act. In that case also the consignee (importer) pleaded mistake in filling the Declaration Form. The consignee (importer) pleaded lack of knowledge of Hindi language. The A.O. rejected the explanation and imposed penalty under Section 22A(7) of the 1954 Act. The consignee (importer) failed before the Appellate Authority. When the matter was pending in second appeal before the Rajasthan Tax Board, the said 1954 Act was replaced by the 1994 Act. The Tax Board held that the burden was on the Department to establish guilty mind (*mens rea*) on the part of the consignee. Accordingly, the appeal was allowed. Thereafter revision petition was filed by the Department. By the impugned judgment, the High Court held that *mens rea* was not a *sine qua non* for levying penalty in case of contravention of Section 22A(3) of the 1954 Act (Section 78(2) of the 1994 Act). Even on facts, High Court held that not filling the Form was a deliberate act which indicated, in any event, an intention of the consignee to evade the tax. Therefore, in that matter, the consignee filed its

appeal by special leave in this Court. After examining the scheme of Section 22A(3) of the 1954 Act, Rule 62A of the Rajasthan Sales Tax Rules, 1955 as well as provisions of Section 78(2) and Section 78(5) of the 1994 Act read with Rules 53 and 54 of the Rajasthan Sales Tax Rules, 1995, this Court held *inter alia* that *mens rea* was not necessary for liability of penalty under Section 78(5) of the 1994 Act. It was held that transport of goods in movement with the prescribed Declaration Form duly signed but without giving material particulars would automatically attract levy of penalty for breach of Section 78(2) of the 1994 Act. It was further held that even if *mens rea* constituted an essential ingredient of the offence under Section 78(2) even then the fact of not giving particulars in the Declaration Form duly signed by the consignee *per se* would amount to evasion of tax because the *modus operandi* adopted by the consignee itself indicated *mens rea*. In that matter heavy reliance was placed by the consignee (appellant) on the judgment of this Court in the case of **D.P. Metals (supra)**. The same judgment is also once again relied upon before us in the present case by the

respondent. The judgment in **D.P. Metals (supra)** has no application. The case of **D.P. Metals (supra)** was not concerned with blank Declaration Form ST 18A travelling along with the goods in movement. In that matter, the question of interpretation of Section 78(5) did not arise. It was a case in which validity of Section 78(5) was challenged on the ground of it being beyond legislative competence, excessive, arbitrary and unreasonable and therefore violation of Articles 14, 19(1)(a), 301 and 304 of the Constitution.

8. For the sake of convenience we reproduce important paragraphs from the judgment of this Court in the case of **M/s. Guljag Industries (supra)** as in our view the judgment in **M/s. Guljag Industries (supra)** squarely applies to the present case:

“9 Existence of *mens rea* is an essential ingredient of an offence. However, it is a rule of construction. If there is a conflict between the common law and the statute law, one has to construe a statute in conformity with the common law. However, if it is plain from the statute that it intends to alter the course of the common law, then that plain meaning should be accepted. Existence of *mens rea* is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals. A penalty imposed for a tax

delinquency is a civil obligation, remedial and coercive in its nature, and is different from the penalty for a crime.

24. Form 18A, as quoted above, is in two parts. Part-A has to be filled in by the consignee. Part-B has to be filled in by the consignor. The nature of the transaction as to whether it is by consignment or by depot transfer or by interstate sale has to be indicated by the consignee. Similarly, the consignee has to indicate the description of the goods. In the present case the consignee (assessee) has left the requisite columns blank. Part-B has to be filled in by the consignor. Part-B requires the consignor to give the estimated value of goods. He has also to give invoice number and the date. It is important to note that the declaration form is collected by the consignee from his A.O. in the State of Rajasthan. The consignee gives an undertaking to get Part-B filled by the consignor. Similarly, the consignee gives a declaration that facts stated in Part-A are true to his knowledge. In the present case, the entire form was left blank though it had been signed by the consignee. Therefore, the declaration given by the consignee is meaningless. There are no facts given in Part-A. There is no identity of the goods transported. There is no description of the goods in movement. As stated above, the original has to be placed before the A.O. by the officer at the check-post. If the form which ultimately goes to the A.O. is blank in all material respects then it is impossible for the A.O. to assess the dealer and it is this practice which has resulted in loss of revenue in crores to the State. Without description of the goods imported, it is easy to manipulate the value. If material particulars are not submitted, one fails to understand how assessment could be finalized. Moreover, as submitted on behalf of the State it has become a common practice to circulate the same form again and again resulting in loss of revenue to the State. It is for this reason that Rule 53 of the RST Rules 1995 contemplates the form to be submitted duly filled in and duly completed. In the present case, the goods in movement were not supported by duly filled in Form No.18A/18C. Therefore, there was contravention of Section 78(2) of the RST Act 1994.

25. There is dichotomy between contravention of Section 78(2) of the said Act which invites strict civil liability on the assessee and the evasion of tax. When a statement of import/export is not filed before the A.O. it results in evasion of tax, however, when the goods in movement are carried without the declaration Form No.18A/18C then strict liability comes in, in the form of Section 78(5) of the said Act. Breach of Section 78(2) imposes strict liability under Section 78(5) because as stated above goods in movement cannot be carried without Form No.18A/18C.

26. We are not concerned with non-filing of statements before the A.O. We are concerned with the goods in movement being carried without supporting declaration forms. The object behind enactment of Section 78(5) which gives no discretion to the competent authority in the matter of quantum of penalty fixed at 30 per cent of the estimated value is to provide to the State a remedy for the loss of revenue. The object behind enactment of Section 78(5) is to emphasise loss of revenue and to provide a remedy for such loss. It is not the object of the said Section to punish the offender for having committed an economic offence and to deter him from committing such offences. The penalty imposed under the said Section 78(5) is a civil liability. Willful consignment is not an essential ingredient for attracting the civil liability as in the case of prosecution. Section 78(2) is a mandatory provision. If the declaration Form 18A/18C does not support the goods in movement because it is left blank then in that event Section 78(5) provides for imposition of monetary penalty for non-compliance.

27. Default or failure to comply with Section 78(2) is the failure/default of statutory civil obligation and proceedings under Section 78(5) is neither criminal nor quasi-criminal in nature. The penalty is for statutory offence. Therefore, there is no question of proving of intention or of *mens rea* as the same is excluded from the category of essential element for imposing penalty. Penalty under Section 78(5) is attracted as soon as there is contravention of statutory obligations. Intention of parties committing such violation is wholly irrelevant.

28. Moreover, in the present case, we find that goods in movement carried with Form No.18A/18C. The *modus operandi* adopted by the assesseees itself indicates *mens rea*. This is not the case where goods in movement are carried without the declaration forms. In the present matter, as stated above, goods in movement were carried with the declaration forms. These forms were duly signed, however, material particulars were not filled in. The explanation given by the assesseees in most of the cases is that they are not responsible for the misdeeds of the consignors. The other explanation given by the assesseees is regarding the language problem. There is no merit in these defences. They are excuses. The declaration forms were unfilled so that they could be used again and again. The forms were collected by the consignee from the said Department. The consignee undertakes to see that the value of the goods is supplied by the consignor. It is not open to the consignee to keep the column in respect of the description of goods as blank. Even the column dealing with nature of transaction is left blank. The consignee is the buyer of the goods. He knows the descriptions of the goods which he is supposed to buy. There is no reason for leaving that column blank. Therefore, there are no special circumstances in any case for waiver of penalty for contravention of Section 78(2). The assesseees were fully aware that the goods in movement had to be supported by Form ST 18A/18C. Therefore, they made the goods travelled with the forms. However, the said forms are left blank in all material respects. Therefore, A.O. was right in drawing inference of *mens rea* against the assesseees.

29. It has been repeatedly argued before us that apart from the declaration forms the assesseees possessed documentary evidence like invoice, books of accounts etc. to support the movement of goods and, therefore, it was open to the assesseees to show to the competent authority that there was no intention to evade the tax. We find no merit in this argument. Firstly, we are concerned with contravention of Section 78(2) which requires the goods in movement to travel with the declaration in Form 18A/18C duly filled in. It is Section 78(2)(a) which has been contravened in the present case by the assesseees by carrying the goods with blank forms though signed by the

consignee. In fact, the assessee resorted to the above modus operandi to hoodwink the competent officer at the check-post. As stated above, if the form is left incomplete and if the description of the goods is not given then it is impossible for the assessing officer to assess the taxable goods. Moreover, in the absence of value/price it is not possible for the A.O. to arrive at the taxable turnover as defined under Section 2(42) of the said Act. Therefore, we have emphasized the words “material particulars” in the present case. It is not open to the assessee to contend that in certain cases of interstate transactions they were not liable in any event for being taxed under the RST Act 1994 and, therefore, penalty for contravention of Section 78(2) cannot be imposed. As stated hereinabove, declaration has to be given in Form 18A/18C even in respect of goods in movement under interstate sales. It is for contravention of Section 78(2) that penalty is attracted under Section 78(5). Whether the goods are put in movement under local sales, imports, exports or interstate transactions, they are goods in movement, therefore, they have to be supported by the requisite declaration. It is not open to the assessee to contravene and say that the goods were exempt. Without disclosing the nature of transaction it cannot be said that the transaction was exempt. In the present case, we are only concerned with the goods in movement not being supported by the requisite declaration.

32. In the present case, the assessee has relied upon the judgment of this Court in the case of **State of Rajasthan and Another v. D.P. Metals – (2002) 1 SCC 279**. In that case the facts were as follows. The assessee firm manufactured stainless steel sheets. The assessee was a registered dealer. On 22.1.97 a truck was inspected by CTO. The same was found without Form 18A. A show cause notice was issued to the assessee. After hearing a penalty was levied under Section 78 (5) of the RST Act 1994. It was held that under Section 78(5) levy of penalty was on the person incharge of the goods. It was held that the said penalty was leviable under two circumstances. Firstly, if there was non-compliance of Section 78(2)(a) of the said Act, namely, that it was not carrying the documents mentioned in that clause. Secondly, if false or

forged documents/declaration was submitted then penalty under Section 78(5) was leviable. After analyzing the said Section, this Court held that in the case of submission of false or forged documents/declaration, the authority was entitled to presume the motive to mislead the authorities. However, in such cases that presumption was rebuttable by the assessee on producing the requisite documents referred to in Section 78(2) (a). That, once the ingredient of Section 78(5) stood established after giving a hearing, there was no discretion with the officer to reduce the amount of penalty or to waive the penalty. If by mistake some of the documents were not readily available at the time of checking, principles of natural justice might require opportunity being given to produce the same. It was further held that under Section 78(5) the legislature has fixed the rate of penalty and, therefore, the quantum of penalty could not be waived or reduced.

33. In our view, the aforesaid judgment in the case of **D.P. Metals (supra)** has no application to the present case. We are not concerned in the present case with false or forged documents/declaration. In the present case the goods in movement were carried with the blank declaration Form 18A/18C which was duly signed by the assessee. Therefore, as stated above, we hold that the goods in movement were carried without the declaration Form 18A/18C. Therefore, Section 78 (2)(a) stood attracted. Moreover, in the present case, there were no special circumstances indicated by the assessee as to why the forms which were duly signed were not filled in. Therefore, in our view the above judgment in the case of **D.P. Metals (supra)** has no application to the facts of the present case. As stated, we are concerned with the blank declaration Form 18A/18C which has travelled with the goods in movement, though signed, was left deliberately blank. The declaration Form 18A/18C is like a return under the Income-Tax Act, 1961. The Assessing Officer completes the assessment on the basis of Form 18A/18C. If that form is left blank in all material respects then it is impossible for the A.O. to arrive at the taxable turnover of the assessee. Therefore, in our view, the judgment of this Court in **D.P. Metals (supra)** has no application to the present case.”

9. Reading the judgment in the case of **M/s. Guljag Industries (supra)**, two points are very clear. That judgment rules out *mens rea* as an essential ingredient of the offence under Section 78(2) for which penalty is imposed under Section 78(5). At the same time, the said judgment, vide Para 28, holds that even if *mens rea* constituted an essential ingredient of an offence still the *modus operandi* adopted by the consignee of not giving particulars in the Form ST 18A *per se* indicated *mens rea* (intention to evade taxes). In the said judgment we have also distinguished the case of **D.P. Metals (supra)** vide para 33. Lastly, we may state that in the case of **M/s. Guljag Industries (supra)** the vehicle was intercepted on 21.1.95; the enquiry was made for contravention of Section 22A(3) of the 1954 Act; and the penalty was imposed under Section 22A(7) of the 1954 Act. Therefore, it is wrong to suggest, as it sought to be done by the respondent herein, that the judgment of this Court in **M/s. Guljag Industries (supra)** has no application to the facts

of the present case as the cause of action arose prior to 22.3.2002. Therefore, in our view the judgment in the case of **M/s. Guljag Industries (supra)** is squarely applicable to the present case.

10. One additional submission is made on behalf of the respondent. It is urged that **M/s. Guljag Industries (supra)** proceeded on the basis of the law as it stood after the amendment made to Section 78(5) of the 1994 Act by Act 7/02 by which the entity which is sought to be penalized is the owner of the goods or a person authorized in writing by such owner or the person in-charge of the goods. According to the respondent herein, in the present case the interception of the truck took place on 30.3.99 and consequently Act No.7 of 2002 dated 22.3.2002 did not apply to the present case. In this connection respondent stated that Section 78(5) as it stood before 22.3.2008 *inter alia* stated “the in-charge of the checkpoint or the officer empowered under sub-section (3), after having given the person in-charge of the goods a reasonable opportunity of being heard and after having held

such enquiry as he may deem fit, shall impose on him for possession or movement of goods a penalty at the stipulated rate”. Therefore, according to the respondent herein the subsequent amendment by Act No.7 of 2002 had no application to this case.

11. To answer the above contention, we need to quote the following provisions from the 1954 Act, the 1994 Act as it stood prior to 22.3.2008, the provision of the 1994 Act after 22.3. 2008, the rules framed under the 1954 Act, the rule framed under 1994 Act as also the Statement of Objects and Reasons for enacting Act No.7 of 2002:

“(a) Provisions contained in the 1954 Act :

Section 22A. Establishment of check-post or barrier and inspection of goods while in transit.-

(3) The owner or person in-charge of a vehicle, boat or animal shall carry with him a goods vehicle record, a tripsheet or a log book, as the case may be, and such other document, as may be prescribed in respect of the goods carried in or on the vehicle, boat or animal, as the case may be, and produce the same before any officer-in-charge of check-post or barrier or any other officer as may be empowered by Government in that behalf. The owner or person in-charge of a vehicle, boat or animal entering the State limits or leaving the State limits shall also give a declaration containing such particulars as may be prescribed of the goods carried in or on the vehicle, boat or animal, as the case may be, before the officer-in-charge of the

check-post or barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer, and keep one copy with him.

(7)(a) The officer-in-charge of the check post or barrier or any other Officer not below the rank of an Assistant Commercial Taxes Officer, empowered in this behalf may, after giving the owner or person incharge of the goods a reasonable opportunity of being heard and after holding such further enquiry as he may be deem fit, impose on him 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, a penalty equal to five times of the rate of tax notified under section 5 of the Act, for such goods or 30% of the value of such goods, as may be determined by such officer [whichever is less].

Provided that where the goods are being carried without proper documents as required by sub-section (3) or with any false declaration or statements and the owner or the incharge or the driver of the vehicle, boat, or animal carrying such goods is found in collusion for such carrying of goods, the vehicle, boat or animal shall also be seized by the Officer empowered under sub-section (7), and such officer', after affording an opportunity of being heard to such owner, incharge or driver may impose a penalty [equal to five times of the rate of tax notified under section 5 of the Act, for such goods or] [30%] of the value of the goods being carried and shall release the vehicle, boat or animal on the payment of the said penalty, or on furnishing such security in such form as prescribed under clause (b) of sub-S. (7):

Provided further that when an owner, incharge or driver of a vehicle, boat or animal is found guilty second time of the offence mentioned in the preceding proviso, he shall be liable to a maximum penalty as mentioned in the preceding proviso and the vehicle, boat or animal carrying the goods may be kept,

seized and detained for a period not exceeding 30 days after the date of the payment of the penalty or furnishing of the security.

Provided also that where a transporter is found to be in collusion with a trader to avoid or evade tax during the course of movement of the goods through his vehicle, such vehicle may, after an opportunity of being heard has been afforded be confiscated by the Commercial Taxes Officer of the area in whose jurisdiction the case was detected, with the prior approval in writing of the Deputy Commissioner (Administration) having jurisdiction and in case of confiscation of the vehicle, no penalty shall be imposed in the preceding first proviso.

(b) Such Officer may release any or the goods seized under subsection (5) or sub-section (6) on payment of the penalty under clause (a) on furnishing such security in such form as may be prescribed for the payment thereof, as he may consider necessary.

(c) such officer may, for sufficient reasons release any of the goods seized as aforesaid even before proceeding under clause (a) or during the course of proceedings under that clause, on furnishing of security of an amount equal to the estimated value of the goods to be released if he considers it necessary so to release the goods.” (emphasis supplied)

Provisions contained in the 1955 Rules:

“Rule (62A) Documents prescribed under section 22A(3) –

(1) The owner or person incharge of a vehicle, boat or animal shall carry with him a bill of sale or dispatch memo, and declarations as provided under the Act and Rules.

Provided that no such bill of sale, despatch memo or declarations shall be necessary to be carried or furnished at check-post, in respect of personal effects otherwise than the goods referred to in sub-rule (2) of any person or exempted

goods as defined in the explanation to sub-section (6) of Section 22A.

(2)(a) If any person other than a registered dealer within the State wants to purchase from outside the State any goods, as notified by the State Government, of the value of rupees one thousand or more for use, consumption or disposal within the State, he shall make and furnish or cause to be furnished declaration in Form S.T.18, the blank forms of which shall be obtained by him on simple application alongwith payment of a fee of rupee one for each form, from the Commercial Taxes Officer concerned of his area where he ordinarily resides. The counterfoil of the declaration shall be retained by such person and its portions marked original and duplicate shall be produced before the officer-in-charge of the check-post, who shall retain such original portion and return such duplicate portion only related in token of having verified it to the person producing it.

Provided that where any person importing scooters moped and motor cycles does not avail of the procedure and/or permission in form ST 18 as prescribed herein above, he shall given intimation of particulars as prescribed in Part 'A' of form ST 18AA herein prescribed duly verified and signed by him at least two weeks before the goods are dispatched from outside the State to the Commercial Taxes Officer of the area in which he ordinarily resides and shall obtain two duplicates copies of the said Form duly received or countersigned from the office of the said Commercial Taxes Officer, and one copy of ST Form 18AA with its Part A duly filled by him shall be produced or caused to be produced by him along with a declaration as prescribed in Part B of form ST 18AA duly verified and signed by the driver or any other person incharge of the vehicle, boat or animal or of the goods before the officer-in-charge of the entry check-post of the state, who shall retain the same.

(b) Any person obtaining Form S.T. 18 under clause (a) shall not in any manner transfer it to any other person obtaining Form ST 18 under clause (a) shall not in any manner transfer it

to any other person for use under the said clause, or shall not authorize any other person for such use on his behalf.

(c) If any Form S.T. 18 obtained under clause (a) is lost, destroyed or stolen, the person concerned shall immediately report in writing in this behalf to the officer from whom such form was obtained.

(d) The application to obtain Form S.T.18 under clause (a) shall be rejected if the Commercial Taxes Officer is satisfied that such form is not required for bonafide use under the said clause.

(3) A registered dealer, -

- (a) who imports any goods as notified by the State Government for sale, use in the manufacture of processing of goods for sale or in mining or generation or distribution of electricity of any other form of power or packing of goods for sale, or
- (b) who receives any goods consigned to him from outside the State for sale,

Shall make and furnish or cause to be furnished declaration in form S.T.18A. The counterfoil of the declaration shall be retained by such dealer and its portion marked original and duplicate shall be produced before the officer-in-charge of the check-post who shall retain such original portion and return such duplicate portion duly sealed in token of having verified it to the person producing it. Such duplicate portion of the declaration shall be furnished by the dealer along with his quarterly statement in form S.T. 6 to the Assessing Authority.

Provided that Form S.T. 18A need not be furnished if the goods are goods of the class or classes specified in the certificate or registration

under CST Act 1956 of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing of goods for sale or mining or in the generation or distribution of electricity or any other form of power.

Provided further that form S.T. 18A need not be furnished if the goods consigned to the State of Rajasthan are High and Light Speed Diesel Oil, Petrol and Aviation Spirit.

(4) The provisions of sub-rule (2), (4), (5), (6), (8), (9), (10), (11) and (12) of rule 15C shall, in so far as may be, *mutatis mutandis* apply to declaration Form S.T. 18A.” (emphasis supplied)

“Rule 25-C. Furnishing of declaration.- (1) A dealer who is entitled to and claims-

- (i) exemption from payment of tax; or
- (ii) payment of tax at a concessional rate.
- (a) on sales made to a registered dealer of goods taxable at the last point for the purpose of-
 - (i) resale within the State; or
 - (ii) sale in the course of inter-State trade or commerce; or
 - (iii) sale in the course of export out of the territory of India, or
 - (iv) sale outside the State; or
- (b) on the sale of any raw material eligible for concessional rate of tax, under section 5C: or
- (c) on sales of any such goods as may be exempted from tax, on the condition of furnishing declaration, shall in respect of each such sale, obtain declaration from the purchasing dealer in Form 17 and shall, alongwith the return under rule 25, file all declarations obtained as aforesaid and also submit a separate list of such sales in Form ST 16.

Provided that all declarations obtained as aforesaid shall be filed by the dealer before or at the time of assessment or within such further time as the assessment may for sufficient cause, permit.

Provided further that no declaration shall cover than one transaction except where the total amount covered by one declaration does not exceed Rs.2 lac for all the transaction in six months.

Provided further that notwithstanding anything contained in sub-rule(1), if the Commissioner, on an application made by a dealer and after making such enquiry as he may consider necessary, is satisfied that the dealer is not in a position to furnish all or any of the declaration referred to in sub-rule (1) above, on account of loss of such declaration(s), subject to the conditions that the application is made within 45 days of such event supported by the evidence of loss of such declaration form.

Provided that an application under the preceding proviso may be made upto 31.12.89 in relation to riots occurred in Makarana Circle in March 1989.

(1a) A dealer who claims concession from payment of tax on the sale of raw material to any notified industry under section 5-CC or to any manufacturer under any notification issued under section 4(2) shall in respect of such sale obtain a declaration from the purchasing manufacturer in Form 17-A and shall, file such declaration before or at the time of assessment unless earlier required by the Assessing Authority and also submit a separate list of such sales in Form ST 16.

Provided that no declaration shall cover more than one transaction except where the total amount covered by one declaration does not exceed R.2 lac for all the transactions in 6 months.

(1b) (i) The goods referred to in sub-section (1) of section 5 CCCC which a registered dealer may purchase, shall be the goods intended for use by him as processing material (other than raw materials) such as machinery, plant, equipment, tools, stores spare parts and accessories in the manufacture or processing of goods for sale, or in mining or in the generation or distribution of electricity:

- (ii) A dealer, who claims special rate of tax on the sales of goods referred to in sub-section (1) of section 5 CCCC shall in respect of such sale obtain a declaration from the purchasing manufacturer in Form ST 17C and shall file such declaration before, or at the time of assessment unless earlier required by the Assessing Authority and also submit a separate list of such sales in Form ST 16:

Provided that no declaration shall cover more than one transaction except where the total amount covered by one declaration does not exceed Rs.2 Lac for all the transactions in six months.

(2) Blank declaration Forms ST 17, ST 17A, ST 17B, ST 17C and ST 18A may be obtained from the assessing authorities on payment in the assessing Government Treasury a sum of Rs.12/- for each book containing 25 Declaration Forms.

(2a) Every declaration form shall be authenticated by the Assessing Authority with date of issue at the time of issuing of declaration forms to the dealer and such forms shall remain valid for 2 years from the date of issue.

Explanation. - Where the declaration forms were issued before the insertion of this sub-rule, they shall remain valid only upto 180 days from the date of insertion of this sub-rule or 2 years from the date of issue, whichever is later.

(3) Before furnishing the declaration to the selling dealer, the purchasing dealer or any person authorized by him in his behalf shall fill in all the required particulars in the form and shall also affix his usual signature in the scope provided in the form for the purpose, thereafter, the counterfoil of the form shall be retained by the purchasing dealer and the other two portions marked original and duplicate shall be made over by him to the selling dealer.

(4) Any unused declaration form or forms remaining in stock with a registered dealer on the cancellation of his registration certificate shall be surrendered to the Assessing Authority.

(5) No registered to whom a declaration form is issued by the Assessing Authority shall either directly or through any other person transfer the same to any other person.

(6) The State Government may, by notification, declare that forms of a particular series, design or colour shall be deemed as obsolete and invalid for use with effect from such date as may be specified in one notification.

(7) A dealer who claims to have made such sales as are envisaged in sub-rule (1); or (1a) or (1b) to another dealer shall in respect of such claim, produce before the Assessing Authority the portion marked “original” of the declaration received by him from the purchasing dealer. The Assessing Authority may in his discretion, or in case of loss of the original foil of the declaration may direct the selling dealer to produce for inspection or record the portion of the declaration marked “duplicate”.

(8) No purchasing dealer shall give, nor shall a selling dealer accept any declaration except in a form obtained by the purchasing dealer, on application from the Assessing Authority and not declared obsolete and invalid by the State Government under the proviso to sub-rule (6). Every declaration form obtained from the Assessing Authority by a dealer shall be kept by him in safe custody and he shall be personally responsible for the loss of Government revenue, if any, directly or

indirectly from any theft or loss thereof. Every registered dealer to whom any declaration form is issued by an Assessing Authority, shall maintain in a register in Form S.T. 16-A a true and complete account of every such form received from the Assessing Authority. If any such form is lost, destroyed or stolen the dealer shall report the fact to the Assessing Authority concerned and shall make appropriate entries in the remarks column of the register in Form S.T. 16-A and take such other steps to issue public notice of loss, destruction or theft as the Assessing Authority may direct.

(9) A declaration form in respect of which a report has been received by an Assessing Authority under sub-rule (8) shall not be valid for the purpose of sub-rule (1) or (1a) or (1b).

(10) Every purchasing dealer shall maintain in Form S.T. 16A a true and complete account of his purchases made on the strength of declarations in Form ST. 16A.

(11) For obtaining declaration forms referred to in sub-rule (1) or (1a) or (1b) a registered dealer or the owner or representative of an undertaking, as the case may be, shall apply in Form ST 16-B to the concerned stating his requirement of such forms and shall furnish such other particulars, statements and information and produce such other documents as the Assessing Authority may require for the purpose of satisfying himself about the *bonafide* use of such form issued to the applicant as previous occasion and *bonafide* nature of the applicant's requirement of such forms.

(12) (a) If for reasons to be record in writing –

- (i) the Assessing Authority is not satisfied that the applicant has made proper use of such forms previously issued to him or that he actually requires such forms he may reject the application.
- (ii) The Assessing Authority is not satisfied that the applicant requires the forms in such numbers as he has applied for he may issue such forms in such

lesser number as, in his opinion, could satisfy the reasonable requirements of the applicant.

(b) If the applicant for declaration forms is, at the time of the application, found to have failed to comply with an order demanding security from him under sub-section (7) of section 6, the Assessing Authority may reject the application.

(c) If the applicant for declaration forms has at the time of making the application defaulted in payment of any outstanding demand or in paying tax according to sub-section (2-A) of section 7 or in furnishing any return or returns together with the receipted challan or challans showing payment of the tax due from him according to such return or returns for the furnishing of which prescribed date or the extended date or dates, if any, have already expired, the Assessing Authority shall withhold the issue of declaration from to him until such time as he:-

(i) deposits the outstanding demand;

(i-a) pays tax according to sub-section (2-A) of section 7 of the Act;

(ii) furnishes such return or returns, together with such receipted challan or challans; and

(iii) furnishes any other return or returns together with the receipted challan or challans showing payment of the tax due according to such return or returns for the furnishing of which the prescribed date or dates or the extended date or dates, if any, may have expired after the date of the application;

Provided that in a case coming under this clause, the Assessing Authority may, instead of withholding the declaration forms, issue such forms in such number and subject to such conditions and restrictions and may be considered reasonable, to an applicant, if in the opinion of the Assessing Authority it is desirable in the interest

of speedy collection of sales tax revenue to grant time to the applicant to pay up the arrears of tax in on lump sum or in instalments.

(d) Where the Assessing Authority does not proceed under clauses (a)(b) or (c), he shall issue the requisite number of declaration forms to the applicant.

(13) The dealer who reports loss theft or destruction from his custody of a blank or duly completed form, shall be required to furnish security by way of an indemnity bond against any possible misuse of the form:

Provided that where a form duly completed and signed is reported to have been lost, stolen or destroyed while in transit between the purchasing dealer and the selling dealer or between the selling dealer and the Assessing Authority, the purchasing dealer or as the case may be, the selling dealer, shall be required to furnish security as aforesaid.

(14) In the case of a purchasing, dealer, security under sub-rule (13) shall be of such amount as may, having regard to the circumstances of the case, be required by the Assessing Authority from whom he obtained the form and shall be furnished to such authority within such period as he may specify:

(15) Where the security under sub-rule (13) is to be given by the selling dealer, it shall be of such amount as may, having regard to the circumstances of the case, be required by the Assessing Authority to whom such dealer has to submit his periodical returns of turnover and shall be furnished to such Assessing Authority within such period as he may specify.

(16) Security required under sub-rule (13) shall be furnished separately, in respect of each form declared as lost, stolen or destroyed.”
(emphasis supplied)

(b) Provisions contained in the 1994 Act :

“Section 78. ESTABLISHMENT OF CHECK-POST AND INSPECTION OF GOODS WHILE IN MOVEMENT: -

(2) The driver or the person incharge of a vehicle or carrier or of goods in movement shall,-

(a) carry with him a goods vehicle record including "challans" and "bilties", bills of sale or despatch memos and prescribed declaration forms;

(b) stop the vehicle or carrier at every check-post set up under Sub-section (1);

(c) produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post.'

(d) give all the information in his possession relating to the goods; and

(e) allow the inspection of the goods by the Incharge of the check-post or any other person authorised by such Incharge.

EXPLANATION (I):-

For the purposes of this chapter,-

(i) "vehicle or carrier" shall include any means of transportation including an animal to carry goods from one point to another point;

(ii) "goods" shall include animals also; and

(iii) "goods in movement" shall means,-

(a) the goods which are in the possession or control of a transporting agency or person or other such bailee;

(b) the goods which are being carried in a vehicle or carrier belonging to the owner of such goods; and

(c) the goods which are being carried by a person.

(4) Where any goods in movement, other than exempted goods, are without documents, or are not supported by documents as referred to in Sub-section (2), or documents produced appear false or forged, the in charge of the checkpost or the officer empowered under Sub-section (3), may,-

(a) direct the driver or the person in charge of the vehicle or carrier of the goods not to part with the goods in any manner including by transporting or re-booking, till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods to the person from whose possession or control they are seized;

(c) release the goods seized in clause (b) to the owner of the goods or to anybody else duly authorised by such owner, during the course of the proceeding if the adequate security of the amount equal to the estimated value of the goods is furnished.

(5) The in-charge of the checkpost or the officer empowered under Sub-section (3), after having given the person in-charge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of Clause (a) of Sub-section (2) or for submission of false or forged documents or declaration, a penalty equal to thirty per cent of the value of such goods.”
(emphasis supplied)

Rules 53 and 54 of the 1995 Rules :

“**Rule 53.** Declaration form required to be carried with the goods in movement for imports within State.--

(1)(a) A registered dealer--

(i) who imports any taxable goods as may be notified by State Government for sale, except when the goods are the goods of

the class or classes specified in the certificate of registration under the Central Sales Tax Act, 1956, of the registered dealer purchasing the goods and are purchased for mining or in generation or distribution of electricity or any other form of power ; or

(ii) who receives any goods as may be notified by the State Government consigned to him from outside the State ; or

(iii) who intends to bring import or otherwise receives any goods from outside the State, as may be notified by the State Government of the value of Rs. 10,000/- or more for use, consumption or disposal otherwise than by way of sale; shall furnish or cause to be furnished a declaration in form ST 18A completely filled in all respect in ink. The counterfoil of the declaration shall be retained by such dealer and its portions marked 'Original' and 'Duplicate' shall be carried with the goods in movement and in case the goods are transported through railways, such portion shall be accompanied with the goods during their movement from railway premises to the place of business.

(b) Any dealer or person other than a Registered dealer:-

(i) who imports any taxable goods as may be notified by the State Government; or

(ii) who receives any goods as may be notified by the state Government, consigned to him from outside the State, or

(iii) who intends to bring, import or otherwise receives any goods from outside the State, as may be notified by the State Government, of the value of Rs.10,000/- or more for use, consumption or disposal within the State; shall furnish or cause to be furnished a declaration in Form ST 18AA, completely filled in all respect in ink. The Counterfoil of the declaration shall be retained by such dealer or person and its portions marked “Original” or “Duplicate” shall be carried with the goods in movement.

- (c) The driver or the other person in-charge of a vehicle or carrier of goods in movement shall carry with him the documents specified in clause (a) of sub-section (2) of section 78 and declaration prescribed in clause (a) or (b) of this sub-rule, in respect of the goods in movement and shall produce the same, suo motu before the in-charge of the entry check-post at the time of entry within the State or before the officer empowered under section 78, at the time of inspection under sub-section (3) of section 78, who shall retain the original portions of the declaration form and return the duplicate portion after signature and making seal in token of having verified it, to the person producing it, and such officer shall send the retained original portion of the declaration form to the assessing authority of the registered dealer or to the authority who issued the declaration form, in the case of dealer or other person other than registered dealer.
- (d) If the declaration form referred to in clause (a) or (b) in respect of the goods in movement has already been submitted to the incharge of the entry check-post or to the officer empowered under section 78, any person transporting the goods shall, on inspection by an officer empowered under section 78, at any subsequent place, produce the countersigned and sealed copy of the aforesaid declaration along with other documents specified in clause (a) of sub-section (2) of section 78.

Explanation : - (1) For the purpose of this rule, “taxable-goods” means all goods, except the goods the sale or purchase of which by dealers is generally exempt from tax without any condition or on the sole condition that an exemption certificate with or without payment of fee is obtained or that the goods are recorded in the registration certificate of the dealer claiming the exemption.

- (2) The registered dealer shall submit a statement of import of goods in Form ST 18 along with the duplicate portions of the Form ST 18A and in case original portion of the Form ST 18A has not been retained by any officer mentioned in sub-rule (1), it shall also be furnished along with the duplicate portions

of Forms ST 18A to his assessing authority every quarter within thirty days from the close of the quarter.

Explanation :- Quarter means the period of three months ending on 30th June, 30th September, 31st December or 31st March.

(3)(a) Any dealer, or the person other than registered dealer as mentioned in clause (b) of sub-rule (1), shall obtain the Form ST 18AA on payment of fee of Rs.10/- per form, from the assessing authority having jurisdiction over the area where his principal place of business is situated or in case there is no such place, where he ordinarily resides.

(b) The Form ST 18AA, issued under clause (a) shall be valid for twenty one days from the date of issue of the declaration form. If the form cannot be made use within the said period of twenty one days, the form shall be returned to the issuing authority within thirty days, from the date of issue of declaration form.

(c) Such dealer or person shall submit a statement of import of goods along with the duplicate portion of the Form ST 18AA, and in case original portion of Form ST 18AA has not been retained by any officer mentioned in sub-rule (1), it shall be furnished with duplicate portion of Form ST 18AA, to the issuing authority above mentioned, within a period of thirty days, from the date of issue of declaration form to him.

(4) Where a registered dealer or any other dealer or person other than registered dealer, fails to furnish statement as mentioned in sub-rule (2) or (3) above as the case may be the assessing authority or the authority who issued the declaration form, after affording a reasonable opportunity of being heard, may impose penalty under section 68 of the Act.

(5) The provisions of sub-rule (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) of rule

23 shall in so far as may be mutatis mutandis apply to the declaration Form ST 18A.

(6) Where Form ST 18A and ST 18AA is out of print or in short supply or otherwise not available in zone, the Commissioner may issue such instructions as he deems proper in view of the circumstances of the case.” (emphasis supplied)

“Rule 54. Declaration required to be carried with the goods in movement for export out of Rajasthan or in the course of interstate trade or commerce;

(1) A registered dealer who dispatches any goods taxable within the state to a place out of the state:-

- (i) for sale outside the state or
- (ii) in the course of interstate trade or commerce, as notified by the State Government shall furnish or cause to be furnished a declaration in form ST 18C completely filled in all respect in ink. Such dealer shall retain the counterfoil of the form within him and shall produce or cause to be produced the portion marked “original” and “Duplicate” before the Incharge of the exit checkpost/Officer empowered under section 78, who shall retain the original portion and return the duplicate portion after marking seal in token of having verified it, to the person producing it, and such officer shall send the retained original portion of the Form ST 18C to the assessing authority of the dealer.

(1) The dealer shall submit a statement of export of goods in Form ST 18B along with the duplicate portion of Form ST 18C and in case original portion of Form 18C has not been retained by any officer mentioned in sub-rule (1), it shall also be furnished along with duplicate portion of form ST 18C to his assessing authority every quarter within thirty days from the close of the quarter.

Explanation: - Quarter means the period of three months ending on 30th June, 30th September, 31st December and 31st March.

- (2) Where a dealer fails to furnish the statement as mentioned in sub-rule (2) above, the assessing authority after affording a reasonable opportunity of being heard, may impose penalty under section 68 of the Act.
- (3) The provisions of sub-rules (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) of rule 23 shall, in so far as may be *mutatis mutandis* apply to declaration Forms ST 18C.
- (4) Where Form ST 18C is out of print or in short supply or otherwise not available in a zone, the Commissioner may issue such instructions as he deems proper in view of the circumstances of the case.

After the existing Form ST 5B and before Form ST 6, the following Form ST 5C shall be inserted.”

- (c) Statement of Objects and Reasons for enacting Act No.7 of 2002 :

“A. Amendment in the Rajasthan Sales Tax Act, 1994:

A dealer applying for provisional and voluntary registration is required to make payment of fee of Rs. 100/-. With the use of computers and other modern techniques and other cost factors, the registration fee fixed about half a decade ago needs upward revision. With this objective sub-sec. (3) of Sec. 17 has already been amended in March, 2001. In consonance with the said amendment, sub-sec. (1) of Sec. 18 and sub-sec. (1) of Sec. 19 providing for the fee for provisional registration and voluntary registration respectively, are required to be amended to empower the State Government to

prescribe such fee in accordance with the prevalent circumstances.

Section 71 provides for the prosecution of any person in the contingencies specified in sub-sec. (1). As per clause (e) of sub-sec. (1), prosecution for deliberately disregarding the notice issued by the Assessing Authority for recovery of demand, prosecution can be launched. However, similar power are not available for the non-compliance of the notice issued by the Commissioner u/s. 93 of the Act to call for certain information. Therefore, clause (e) of sub-sec. (1) of Sec. 71 is proposed to be amended.

To protect the interest of the consumer, it is being proposed to make it mandatory to issue bill or cash memorandum by every registered dealer on each sales of goods, other than the exempted goods, of value of rupees two hundred or more. Failure to do so will incur penalty of a sum equal to five times of the amount of tax leviable on the sale in question or rupees five hundred, whichever is higher. With these objectives the existing Sec. 76 is proposed to be suitably amended.

To have a check on the evasion of tax by unscrupulous dealers/transporters by non-disclosure of the details of the goods at the nearest border check-posts established under sub-sec. (1) of Sec. 78, the existing clause (b) of the Sec. 78 is being amended to make it mandatory to bring the vehicle or carrier at the nearest border check-post while entering or leaving the State. Failure to do so has been made subject to penalty by adding a new sub-sec. (10-A) in Sec. 78.

While filing first appeal, the appellant is required to deposit the admitted amount of tax or other admitted amount or ten per cent of the tax or

the other amount assessed and in case of an appeal from an ex-parte assessment order five per cent of the tax or the other amount assessed, whichever is higher. The section is proposed to be amended suitably to encourage rightful appeals to be filed.

Section 87 provides for power of revision to Commissioner in case an order passed by the subordinate authorities is erroneous as well as prejudicial to the interest of the revenue. Both these conditions have to be satisfied for exercising these powers. Even in case of patently erroneous order passed by such authorities cannot be questioned except at the appellate forum, which may result in substantial delay in getting the grievances redressed. Therefore, by amending sub-sec. (1) of Sec. 87 of the Act, it is proposed that the powers of revisions can be exercised on fulfillment of either of the above two conditions.

As per present provisions of sub-sec. (2) of Sec. 93 the Commissioner can ask for submission of specific information from dealers but not from other persons. For effective enforcement of the provisions of the Act, it is proposed to include words 'any person' in the aforesaid sub-section."

(emphasis supplied)

- (d) Provisions of Section 78(5) after its amendment by Act No.7 of 2002 :

“Section 78. ESTABLISHMENT OF CHECK-POST AND INSPECTION OF GOODS WHILE IN MOVEMENT: -

- (5) The in-charge of the check-post or the officer empowered under sub-section (3), after having given the owner of the goods or a person authorized in writing by such owner or the person in-charge of the goods the person incharge of the goods a

reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or declaration, a penalty equal to thirty per cent of the value of such goods.”

(emphasis supplied)

12. As stated above, it is the case of the respondent herein that under Section 78(2) and under Section 78(5) penalty was leviable after due opportunity only on “the person in-charge of the goods” under the 1994 Act and since this case arose out of cause of action when the truck was intercepted on 30.3.99, respondent who is the owner of the goods cannot be penalized under unamended Section 78(5) of the 1994 Act. We do not find merit in this argument.

13. Let us examine the scheme of Section 78 of the said 1994 Act prior to 22.3.2002. Under Section 78(2) the driver or the person in-charge of a vehicle or carrier of goods in movement had to carry with him goods-vehicle record including challans, bilties, bills of sale despatch memos and

declaration in Form ST 18A. Under Section 78(4) where any goods in movement travel without the above documents (including Form ST 18A) or if the documents produced appeared to be false or forged then the in-charge of the check-post may *inter alia* seize the goods for reasons to be recorded in writing or direct the person in-charge of the vehicle not to part with the goods in any manner or to release the goods seized to the owner of the goods. Therefore, there was a dichotomy between the person in-charge of the vehicle or carrier of goods in movement under Section 78(2) on the one hand and the owner of the goods under Section 78(4) on the other hand. However, under Section 78(5) the in-charge of the check-post after having given the person in-charge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods in violation of the provisions of Section 78(2)(a) a penalty equal to 30% of the value of such goods. 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 18A 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 22.3.02 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 the Form ST 18A. 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 a vehicle or carrier of goods in movement” whereas the words in Section 78(5) which comes after sub-section (4) refers 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”.

14. Therefore, in our view, the judgment of this Court in the case of **M/s. Guljag Industries (supra)** would squarely apply to the facts of the present case. In fact, our view in the case of **M/s. Guljag Industries (supra)** finds support from the amendment made in Section 78(5) vide Act No.7 of 2002 w.e.f. 22.3.2002 by which the expression “person in-charge of the goods” under the old Section 78(5) is substituted by the words “the owner of the goods or a person authorized in writing by such owner or person in-charge of the goods”. It is once again emphasized that Act No.7 of 2002 is an exercise in substitution. Therefore, the Legislature seeks to clarify the expression “person in-charge of the goods” occurring in Section 78(5) as it stood earlier by Act No.7 of 2002. In fact, it

is interesting to note that even under Section 22A(3) of the 1954 Act, penalty was leviable on the “owner of the goods” for possession of goods not covered by the Goods Vehicle Record [including Declaration under Section 22A(3)].

15. Before concluding, on facts, we may point out that before the A.O. the respondent contended that filling of the Form ST 18A was the responsibility of the transporter and the consignor (which argument presupposes that respondent had not filled the particulars in the Form ST 18A) whereas before the Dy. Commissioner (A) a Form was produced purportedly sent to the consignor which was not accepted. According to the Commissioner (A) it was an after-thought. Before the Tax Board it was submitted by the respondent that a blank Form was sent to the consignor. In view of the above prevarication we hold that the Dy. Commissioner (A) was right in holding that all the above excuses are trotted out as an afterthought. Even the production of the Form before the Dy. Commissioner (A) was an afterthought. Under the 1995 Rules, the consignor is required to give the said Form duly filled in when the

consignment is ordered. The consignee has to see that the Form is given to the transporter with the complete details duly filled in by the consignor. If one sees the Form it is clear that it shall be the duty of the consignee or his agent (transporter) to see that the consignor fills the Form. Therefore, on facts we are satisfied that the said Form in ST 18A though signed, remained incomplete. The details required were never supplied. Hence penalty was correctly levied under Section 78 (5) of the 1994 Act.

16. For the aforestated reasons, we set aside the impugned judgment and allow Department's civil appeal with no order as to costs.

.....J.
(S.H. Kapadia)

.....J.
(B. Sudershan Reddy)

**New Delhi;
November 6, 2008.**

