

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8216 OF 2013
(@ SPECIAL LEAVE PETITION (C) NO.4194 OF 2010)

ASSISTANT COMMERCIAL TAXES OFFICER

APPELLANT(S)

VERSUS

M/S PAREKH ENTERPRISES

RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court of Judicature for Rajasthan at Jaipur in S.B. Sales Tax Revision Petition No.110 of 2009, dated 01.07.2009. By the impugned judgment and order, the High Court has set aside the penalty levied by the Assistant Commercial Taxes Officer, Bhiwadi (Revenue) in exercise of their powers under Section 78(5) of the Rajasthan Sales Tax Act, 1994 (for short 'the Act').
3. The Assistant Commercial Taxes Officer, Bhiwadi had levied penalty in exercise of his powers under Section 78(5) of the Act against the owner of the vehicle who was carrying certain goods of the assessee. Being aggrieved by the said order, the assessee had carried the matter in further appeal before the various authorities and the same had culminated into a final order passed by the High Court. The High Court has taken the view that the Revenue could not have directed the owner of the vehicle to pay the penalty imposed under Section 78(5) of the Act.

4. Being aggrieved by the aforesaid finding and the conclusion reached by the High Court, the Assistant Commercial Taxes Officer, Bhiwadi is before us in this appeal. The issue raised in this appeal is no more *res integra* in view of the judgment of this Court in the case of *Assistant Commercial Taxes Officers Vs. Bajaj Electricals Limited*, reported in (2009) 1 SCC 308. In the said decision, this Court has observed:

"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".

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)]."

5. In view of the aforesaid decision of this Court, the judgment and order passed by the High Court cannot be sustained and deserves to be set aside.

6. Therefore, we allow this appeal, set aside the order passed by the High Court and restore the order passed by the Assistant Commercial Taxes Officer, Bhiwadi.

Ordered accordingly.

JUDGMENT

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

.....J.
(M. Y. EQBAL)

NEW DELHI;
SEPTEMBER 13, 2013