

M/S. Guljag Industries vs Commercial Taxes Officer on 3 August, 2007

Bench: S. H. Kapadia, B. Sudershan Reddy

CASE NO. :

Appeal (civil) 5197 of 2005

PETITIONER:

M/s. Guljag Industries

RESPONDENT:

Commercial Taxes Officer

DATE OF JUDGMENT: 03/08/2007

BENCH:

S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:

WITH Civil Appeals Nos.5210, 5211, 5212, 5213, 5214, 5215-16, 5217, 5218, 5219, 5220, 5221, 5222, 5223, 5224, 5226, 5227, 5228, 5229, 5230, 5232, 5233, 5234, 5235, 5236, 5237, 5238, 5239, 5240, 5243, 5244, 5245, 5246, 5247, 5248, 5249, 5250, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5269, 5255, 5256, 5257, 5258, 5259, 4412, 5283, 5723, 4413, 4414, 4415, 4416, 4417, 4418, 4419, 4420, 4421, 4422, 4423, 4425, 4426, 4429, 4430, 4431, 4432, 4433, 4434, 4435, 4436, 4437, 4439, 4440, 4441, 4442, 5252, 5253 of 2005 Civil Appeal No.1927, 2243, 2392, 2393, 2952, 2953, 3195, 5273 of 2006 Civil Appeal Nos.1422, 1769, 2291 of 2007 Civil Appeal No. 3419 of 2007 arising out of Special Leave Petition (C) Nos.18473/2005 Civil Appeal No. 3420 of 2007 arising out of Special Leave Petition (C) No.9748/2005 J U D G M E N T KAPADIA, J.

1 Leave granted in special leave petitions.

2 In this batch of civil appeals we are required to consider the scope of Section 78(5) of the Rajasthan Sales Tax Act, 1994 which is in pari materia to Section 22A (7) of the Rajasthan Sales Tax Act, 1954.

3 For the sake of convenience we may mention the facts in Civil Appeal No.5197 of 2005 M/s. Guljag Industries v. Commercial Taxes Officer.

4 On 21.1.95 near the Banar Road Check Post a vehicle was checked in which 47 barrel of chemicals were transported from Vishakapattanam. Along with the goods, outward gate pass No.4331 dated 16.9.95 of Andhra Petro-Chemicals Ltd. and consignment No.920 dated 16.9.95 of M/s. AVR & Co. were found in which the name of the consignor was shown as M/s. Andhra Petro-Chemicals Ltd. Vishakapattanam and the name of the assessee was mentioned as M/s. Guljag Industries (assessee - appellant herein). Along with the goods, Form ST 18A No.236084 was also found in which the goods

transported was not declared though the same was duly signed. Under the above circumstances the A.O. came to the conclusion that there was a contravention of the provisions of Section 22A(3) of the Rajasthan Sales Tax Act, 1954 (for short, 'RST Act 1954') read with Rule 62A(3) of the Rajasthan Sales Tax Rules, 1955 (for short, 'RST Rules 1955'). He accordingly issued notice under Section 22A(7) of the RST Act 1954 calling upon M/s. Guljag Industries to show cause why penalty was not leviable for violation of Section 22A(3) of the RST Act 1954. In response to the said notice M/s. Guljag Industries submitted that there was mistake in filing the declaration form and, therefore, there was no intention of tax evasion. It was further submitted that the said declaration Form ST 18A (Form No.18A) was supposed to be filled in by the consignor but due to lack of knowledge of Hindi language the same could not be filled in by the consignor. The AO did not accept the Explanation given by M/s. Guljag Industries. The AO refused to accept the unfilled form as a declaration. Accordingly, he imposed the penalty under Section 22A(7) of the RST Act 1954. Aggrieved by the decision of the AO, M/s. Guljag Industries preferred Appeal No.77/RST/JUC/95-96. By order dated 10.8.99, Dy. Commissioner (Appeals) came to the conclusion that under Rule 25(3) of RST Rules 1955 the purchasing dealer was required to give the requisite declaration in Form ST 18A to the selling dealer. According to the appellate authority, the responsibility to fill the form was on M/s. Guljag Industries. That, M/s. Guljag Industries carried on business from Rajasthan. It was familiar with Hindi language. Therefore, the unfilled Form No.18A cannot be accepted as a declaration. The appeal was accordingly dismissed. Aggrieved by the decision of Dy. Commissioner (Appeals), M/s. Guljag Industries carried the matter in second appeal to Rajasthan Tax Board, Ajmer being Appeal No.1375/99/Jodhpur. By that time Rajasthan Sales Tax Act 1994 (for short, 'RST Act 1994') came to replace RST Act 1954. However, Section 78(5) of RST Act 1994 was in pari materia to Section 22A(7) of RST Act 1954. By order dated 27.2.2002 the Board came to the conclusion that penalty could not be imposed without establishing guilty mind (mens rea) on the part of M/s. Guljag Industries (assessee). The appeal was allowed.

5 Aggrieved by the decision of the Board, the Department carried the matter in revision to the Rajasthan High Court. By order dated 14.10.03 the single Judge held that presence of mens rea was not a sine qua non for levying penalty in case of contravention of Section 22A(3) of the RST Act 1954 (Section 78(2) of the RST Act 1994). By the said order the learned single Judge held that in the present case Form No.18A was totally blank though signed by the consignee; that it was the duty of the consignee or his agent to see that the form was returned to the transporter with complete details by the consignor. It was further held that the filling up of the form was the duty of the consignee/importer. The learned single Judge held that in the circumstances since the consignee was from Rajasthan and since the form was unfilled it cannot be said that the error was accidental. That, moreover in both the States, namely, Andhra Pradesh (Vishakapattanam) and Rajasthan, there are Hindi-speaking persons. In the circumstances, the learned single Judge held that the form was deliberately not filled in which indicated an intention of the assessee M/s. Guljag Industries to evade the tax. Accordingly, the order of the Board was set aside. Aggrieved by the order passed in revision by the single Judge the assessee (M/s. Guljag Industries) has come to this Court by way of Civil Appeal No.5197 of 2005.

6 In Civil Appeal No.5240 of 2005 Assistant Commercial Taxes Officer v. M/s. Guljag Industries Ltd. preferred by the Department the facts are as follows.

7 On 1.11.90 at Abu Road Check-Post, a vehicle was checked which was carrying goods. On search the driver furnished GR No.1 dated 31.10.90 issued by M/s. Delhi Bombay Road Lines. The consignment was shown to be M/s. Sumit Marbles, Abu Road. There was Bill No.122 dated 31.10.90. That Bill referred to 50.31 sq. meters of granite priced at Rs.34,494 and the name of the recipient was shown M/s. Sri Parashwanath Granites. On verification of the vehicle, the goods were found to be more than the quantity shown in the bill. On searching the vehicle two envelopes were found one of which was of M/s. Sri Parashwanath Granites and other was of M/s. Hindustan Granites. Being suspicious of the evasion of tax, notice under Rule 54 of RST Rules 1995 was issued on 16.11.90. The representative of the assessee appeared. He deposited the disputed penalty amount and goods were released. In reply to the show cause notice given to the assessee proposing levy of penalty under Section 22A(7) of the RST Act 1954, it was submitted by the assessee that he had delivered the relevant documents to the transporter which were found to be in the vehicle at the time of the seizure of the goods and, therefore, the assessee was not liable to be penalized under the said Section. According to the assessee (M/s. Sri Parashwanath Granites), the driver of the vehicle had made a mistake in not producing the documents which were with him at the time of checking and, therefore, the assessee was not liable to be penalized for breach of Rule 62A RST Rules 1955. This explanation was not accepted.

8 On appeal, the Dy. Commissioner (Appeals) confirmed the levy of penalty. The appellate authority held that non-production of the Bill at the check-post indicated guilty mind of the assessee to evade tax. On further appeal, the Rajasthan Sales Tax Tribunal vide order dated 31.3.93 took the view that mere non-production of document by the driver at the check-post cannot result in levy of penalty. Against the order of the Tribunal, a revision was filed before the single Judge of the High Court, however, on constitution of Rajasthan Taxation Tribunal, it stood transferred. The Tribunal took the view that it was obligatory on the part of the consignee or his agent to carry with him the requisite documents and also to produce the documents at the check-post on demand by the officer. The Tribunal took the view that contravention of Section 22A of the RST Act 1954 cannot be obliterated by producing subsequently the documents at the time of assessment. The Tribunal took the view that Rules 62A and 63 of the RST Rules 1955 have no application. The said rules applied at the stage of assessment. Accordingly, the Tribunal held that penalty was automatic once the driver on demand failed to produce the document lying with him or if he fails to produce the documents accompanied the goods under Section 22A(3) of the RST Act 1954. According to the Tribunal, once the offence is complete subsequent furnishing of the documents even if bona fide will not relieve the owner of the goods from liability of penalty. This decision of the Tribunal was challenged by M/s. Sri Parashwanath Granites. By judgment dated 2.6.2004, the High Court held that the levy of penalty was not automatic in the case where the goods in movement are found to be unaccompanied by the required documents. According to the High Court, the question of levy of penalty would arise only before the goods are delivered to consignee and if it is found that the goods are in movement unaccompanied with documents. On facts the High Court found that if for some reason the driver failed to produce these documents at the check-post which were subsequently produced and which were not false or forged, it could not be said that there was intention to evade the tax. The High Court held that merely because the driver had not shown the documents given to him by the assessee, could not make the assessee guilty of contravention. Consequently, the High Court held that notwithstanding the failure on the part of the driver to show the bill accompanying the goods at

the time of checking but in fact recovered from its possession later on ruled out the possibility of the document being subsequently prepared, accordingly, the order imposing penalty was set aside. At this stage, we may state that even in this ruling of the High Court in the case of Sri Parashwanath Granites, the High Court has clarified that the case of Sri Parashwanath Granites was not the case of the documents being incorrect. On the contrary, the High Court found that the document, namely, the bill accompanying the goods was correct in all respects and, therefore, there was no tax evasion. Consequently, the order imposing penalty was set aside. This decision of the High Court in Sri Parashwanath Granites has been followed by the High Court in the case of M/s. Guljag Industries. Hence, aggrieved by the said decision, the Department has come to this Court by way of Civil Appeal No.5240 of 2005.

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.

10 Therefore, the short point which arises for determination in this batch of civil appeals is : whether the above presumption, namely, that mens rea is an essential ingredient in every offence is displaced by the words of Section 78(5) RST Act 1994.

11 To decide the above question we quote hereinbelow Section 22A of the RST Act 1954 which reads as under:

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

(1) If the State Government or the Commissioner considers it necessary that with a view to prevent or check evasion of tax under this Act in any place or places within the State it is necessary so to do, it may; by notification in the Official Gazette, direct the setting up of a check-post or the erection of a barrier or both at such place or places as may be specified in the notification;

Provided that the Commissioner may not direct the setting up of a check-post or the erection of a barrier for a period exceeding six months.

(2) At every check-post or barrier set up or erected under sub-section (1) or at any other place when so required by any officer empowered by the State Government in this behalf, the driver or any other person in-charge of a vehicle, boat or animal shall stop the same and keep it stationary so long as may reasonably be necessary and allow the officer-in-charge of the check-post or barrier or the officer empowered as aforesaid to examine the goods carried in or on such vehicle, boat or animal and inspect all records relating to the goods carried which are in the possession of such

driver or other person incharge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle, boat or animal and also the names and addresses of the consignors and consignees, if any, and in case the consignor or the consignee is a registered dealer, whether in this State or in any other State, the number within the name of the district of issue of the registration certificate, if any, of such consignor or the consignee, as the case may be.

(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.

(4) xxx xxx xxx (5) The officer-in-charge of a check-post or barrier or the officer empowered under sub-section (2) may seize or pass order to retain under sub-section (9). [xxx] any goods which are under transport by a vehicle, boat or animal and are not covered by a goods vehicle record, a trip sheet or log book as the case may be, and other documents prescribed under sub-section (3) and when the goods vehicle, boat or animal carrying any goods enters or leaves the State limits, the declaration referred to in sub-section (3) also.

(6) The officer-in-charge of the check-post or barrier or any other officer empowered in that behalf may seize or pass order to retain under sub-section (9) any goods (other than exempted goods) which are under transport by a vehicle, boat or animal in respect of which the declaration is false or which are not covered by the documents prescribed under sub-section (3):

Provided that before seizing any goods, the officer-in-charge of the check-post or barrier or any other officer empowered in that behalf shall record his reasons for doing so and shall give a receipt for the goods to the person from whose possession or control they are seized.

Explanation I.- For the purpose of this sub-section, "exempted goods" includes goods the sale or purchase of which by dealers in general is exempt from tax without any condition or on the sole condition that an exemption certificate, with or without payment of fee, is obtained or the goods are recorded in the registration certificate of the dealer claiming the exemption.

Explanation II.- For the purpose of this section the goods under transport means goods which have been handed over to a carrier and complete delivery thereof has not been taken from such carrier.

Explanation-III. Carrier means any person or agency who undertakes to carry or transport goods from one destination to another.

(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 deemed 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.

(8) All provisions of this section shall apply mutatis mutandis to goods and animals liable to tax under this Act which may be carried by any means of transportation other those specified in sub-section (2).

(9) An officer empowered under this section shall have the power to inspect goods under transport including the documents and records relating thereto, and may direct a carrier not to part with the goods including re-transporting or re-booking till such verification is done or such enquiry is made as is deemed necessary by such authority.

(10) No order of penalty under this section shall be quashed or deemed to be void or voidable for want of seizure or mistake, defect or omission in seizure."

12 We also quote hereinbelow Rule 62A of the RST Rules 1955 which reads as under:

"(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."

13 We also quote hereinbelow Rule 25-C of the RST Rules 1955 which reads as under:

"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 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."

14 We also quote hereinbelow Section 78 of the RST Act 1994 which reads as under:

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

(1) The Commissioner may, with a view to prevent or check avoidance or evasion of tax, by notification in the Official Gazette, direct the setting up of a check-post at such place and for such period as may be specified in the notification, and every officer or official who exercises his powers and discharges his duties at such check-post by way of inspection of documents produced and goods being moved, shall be its Incharge.

(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 "billies", 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.

(2A) The State Government may require by notification that the documents required to be furnished under sub-section (2) shall be furnished by means of such electronic devices, and be accompanied by such processing fee as may be prescribed.

(3) Where any goods are in movement within the territory of the State of Rajasthan, an officer empowered by the State Government in this behalf may stop the vehicle or the carrier or the persons carrying such goods, for inspection, at any place within his jurisdiction and the provisions of Sub-section (2) shall mutatis mutandis apply.

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

(a) direct the driver or the person incharge of the vehicle or carrier or of the goods not to part with the goods in any manner including by retransporting or rebooking, 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 a 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 court of the proceeding if adequate security of the amount equal to the estimated value of the goods is furnished.

(5) The Incharge of the check-post or the officer empowered under Sub-section (3), after having given 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).

(6) During the pendency of the proceeding under Sub-section (5), if anybody appears before the Incharge of the checkpost or the officer empowered under Sub-section (3) and prays for being impleaded as a party to the case on the ground of involvement of his interest therein the said Incharge or the officer on being satisfied may permit him to be impleaded as a party to the case; and thereafter, all the provisions of this section shall mutatis mutandis apply to him.

(7) The Incharge of the check-post or the officer empowered under Sub-section (3) may release the goods to the owner of the goods or to anybody else duly authorised by such owner, it seized and not already released under clause (c) of sub-section (4), on payment of the penalty imposed under sub-section (5) of on furnishing such security for the payment thereof, as such Incharge or officer may consider necessary.

(8) Where the driver or the person incharge of the vehicle or the carrier is found guilty for violation of the provisions of Sub-section (2), subject to the provisions of Sub-section(10), the Incharge of the check-post or the officer empowered under Sub-section (3) may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person incharge of the vehicle or the carrier, may impose a penalty on him as provided in Sub-section (5).

(9) The Incharge of the check-post or the officer empowered under Sub-section (3) may release the vehicle or the carrier on the payment of the amount of penalty imposed under Sub- section (8) or on furnishing such security as may be directed by such Incharge or Officer.

(10) Where a transporter, while transporting goods, is found to be in collusion with a trader to avoid or evade tax, the Incharge of the check-post or the officer empowered under Sub-section (3) shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with the prior approval in writing of the Deputy Commissioner (Administration) having jurisdiction, may confiscate such vehicle or carrier.

(11) If a transporter fails to give information as required from him under Clause (d) of Sub-section (2) about the consignor, consignee or the goods within such time as may be specified or transports the goods with forged documents, besides imposing the penalty under Sub-section (5), it shall be presumed that the goods so transported have been sold in the State of Rajasthan by him and he shall be deemed to be a dealer for those goods under this Act.

(12) The provisions of this Act shall for the purpose of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to the transporter deemed to be a dealer under Sub-section (11)."

(emphasis supplied by us) 15 We also quote hereinbelow Rules 53 and 54 of the RST Rules 1995 which read as under:

"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."

"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 checkpoint/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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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

16 We also quote hereinbelow Rule 55(3) of the RST Rules 1995 which reads as under:

"55. Delivery of documents and seizure of goods.-

(1) & (2) xxx xxx xxx (3) Where, a person-incharge of the goods or the driver, as the case may be, does not possess any document and declaration form in respect of the goods in movement, or refuses to deliver the documents and the declaration form, or the documents and the declaration form produced appear to be false or forged, the incharge of the check-post or the officer empowered under rule 52, may get such goods unloaded from the vehicle or the carrier and seize the same and shall issue a receipt of the goods so seized in form ST 20."

16A We also quote hereinbelow Section 68 of the RST Act 1994 which reads as under:

"68. Penalty for other violations. Where any dealer or a person fails to comply with a direction given by any officer or authority appointed or constituted under this Act or violates any of the provisions of this Act or the rules, for which no specific penalty has been provided elsewhere under the Act or the rules, the assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer as authorized by the Commissioner, may direct that such person shall pay by way of penalty a sum not exceeding Rs.2000/- and in the case of continuing default, a further penalty of Rs.25/- for every day of such continuance.

17 We also quote hereinbelow declaration Forms ST 18A and ST 18C which read as under:

"[FORM S.T. 18A] (See Rule 53) DECLARATION FOR IMPORTS BY REGISTERED DEALERS Counterfoil/Duplicate/Original Book No. _____ Serial No. _____ Seal of Issuing Authority Name of the Office of issue _____ Date of issue _____ To, The In-charge Check-post .

Declared and Certified that the goods, particulars of which are given below, have been imported by me/us from outside the State for purposes mentioned in rule 53, and hold myself/ourselves liable for payment of tax as per law to the Government on the sale thereof.

PART-A (To be filled in by Consignee) (1) Name and complete _____ address of the Consignor _____ (2) (a) Name and complete _____ address of the consignee _____

(b) R.C. No. of the _____ consignee under _____ RST Act _____ CST Act _____ (3) Nature of the transaction:- _____

(a) Consignment; or _____

(b) Depot transfer; or _____

(c) Inter-State sale; or _____

(d) Any other nature _____

1. Description of the goods _____ PART-B (To be filled in by the consignor or person authorized)

1. Price/estimated value of goods in Rs .

2. Invoice No./Challan No. and date.

3. (a) Name and full address of the carrier ("Transport Co. or owner of the vehicle)

(b) Registration No. of the vehicle _____ I, .. Proprietor/
Partner/ Director/ Karta/ Manager/ Secretary of M/s. _____ hereby
declare that the facts stated above in PART-A are true to the best of my knowledge
and belief and nothing has been concealed. I also undertake the responsibility to get
filled up PART-B from the consignor.

Seal of the consignee or of the Dealer with R.S.T./C.S.T. Nos.

Signature and status of the person signing the declaration.

(emphasis supplied by us)"

_____ "COUNTERFOIL ORIGINAL DUPLICATE [FORM S.T. 18C] (See Rule
54) DECLARATION FOR CARRYING GOODS OUTSIDE THE STATE BY
REGISTERED DEALERS Book No. _____ Serial No. _____ Seal of
Issuing Authority Name of the Office of issue _____ Date of issue
_____ To, The Check-post In-charge, _____ .

Certified that the goods, particulars of which are given below by me to _____ .
(place) outside the State of Rajasthan as a result of interstate sale or for sale outside
the State or in the form of branch transfer or by principal to outside agent or vice
versa and I hold myself liable for payment of tax as per law: -.

1. Name and _____ address of the Consignor

2. Registration No. of the consignor _____ under RST Act and
CST Act _____

3. Name and _____ address of the Consignee with
_____ R.C. No. under _____ RST Act
_____ CST Act _____

4. Nature of the transaction:- _____

(a) Inter-State sale _____

(b) Despatch for sale outside the State _____

(d) Any other nature _____

5. Description of the goods _____

(a) Taxable goods. _____

(d) Tax Paid goods _____

6. Quantity of the packages/goods _____

7. Weight of the goods. _____

8. Value/Estimated value of the goods (in Rs.) _____

9. Consignor's invoice/Challan No. _____ and Date

10. (i) Name and full _____ address of the transporter
_____ (Transport Company or owner _____
of the vehicle or carrier.) _____

(ii) Registration No. of the _____ vehicle or carrier.
_____ I, .. Proprietor/ Partner/ Director/ Karta/
Manager/ Secretary hereby declare that the facts stated are true to the best of my
knowledge and belief and nothing has been concealed.

Seal of the consignor with R.S.T./C.S.T. Registration Nos.

Date "

Signature and status of the person signing the declaration.

_____ 18 Since the RST Act 1954 has been substituted verbatim by the RST Act 1994 we prefer to analyse the RST Act 1994.

19 The said RST Act 1994 came into force on 1st October 1995. Section 3 of the RST Act 1994 states that if the turnover of a dealer exceeds Rs.50,000/- in case he is an importer and if his turnover exceeds Rs.1,00,000/- in other case, he shall be liable to get registration under the Act. Under Section 4, the tax payable by a dealer shall be at a single point in the series of sales by successive dealers. Under Section 6, it is stated that in case of a dealer other than a manufacture or processor whose total accessible purchases in a year does not exceed Rs.10 lakhs may be allowed by the AO to pay tax on aggregate basis. Section 7 refers to payment of self-assessed tax. Section 12 refers to levy of tax on the turnover at each point of sale by the dealer. Section 13A deals with levy of turnover tax. Chapter VIII deals with inspection, search, seizure and anti-evasion provisions. Under Section 78(1) the Commissioner has the power to set up check-posts at such place and for such period as may be specified. Section 78(2)

requires the driver or person incharge of a vehicle or incharge of the goods to carry with him goods-vehicle record (including challans and bills, despatch memos, bills of sale and prescribed declaration forms. Under Explanation (iii) it is stipulated that for the purposes of Chapter VIII the goods in movement shall mean the goods which are in possession of the transporter. Under Section 78(5) the competent officer has to give hearing to the owner or his representative and after enquiry the competent officer is empowered to impose on the owner a penalty equal to 30 per cent of the value for movement of goods in contravention of Section 78(2).

20 The facts enumerated above in Civil Appeal No.5197 of 2005 is the lead case in which one finds that the goods in movement were carried with blank declaration forms though signed by the consignee. The material particulars like quality, weight and description of the goods required to be filled in by the assessee (consignee) were left blank. Therefore, in this batch of civil appeals we are concerned with cases where the goods in movement were carried with blank Form ST 18A. In our view, on the face of it there was contravention of Section 78(2) of the RST Act 1994. Under Rule 53 of the RST Rules 1995 (Rule 25C of the RST Rules 1955) every registered dealer who imports taxable goods, for sale within the State, is required to furnish declaration Form 18A completely filled in, in all respects (emphasis supplied by us). Under Rule 53 of the said Rules the counterfoils of the declaration has to be retained by such consignee and its portions marked as 'original' and 'duplicate' have to be carried with the goods in movement. Under Rule 53(1)(c) the driver of the goods in movement has to carry with him documents specified in Section 78(2)(a) as also the declaration form prescribed in Section 78(2)(a). Under the said Rule 53(1)(c) the driver is required to produce the declaration form, suo motu at the check-post at the time of inspection when the competent officer is required to retain the original of the declaration form and return the duplicate portion to the driver. The competent officer shall thereafter forward the original portion of the declaration to the A.O. of the registered dealer or to the authority which has issued the declaration form to the consignee. Under Rule 53(2) the registered dealer is required to submit a statement of import of goods in the Form 18A to the A.O. every quarter. Under Rule 53(4) where a registered dealer fails to furnish such statement the A.O. or the authority who issued the declaration forms may impose penalty under Section 68 of the said Act. Similarly, under Rule 54 of the RST Rules 1994, a dealer who despatches any taxable goods to a place outside the State is also required to carry declaration in Form 18C with the goods in movement for export out of Rajasthan or in the course of interstate trade or commerce. The dealer is also required to submit his statement of exports to the A.O. along with his returns which he files quarterly. 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.

21 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. 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. 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. Moreover, in the present case, we find that goods in movement carried with Form No.18A/18C. The modus operandi adopted by the assessee 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 assessee in most of the cases is that they are not responsible for the misdeeds of the consignors. The other explanation given by the assessee 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 assessee was 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 assessee. It has been repeatedly argued before us that apart from the declaration forms the assessee possessed documentary evidence like invoice, books of accounts etc. to support the movement of goods and, therefore, it was open to the assessee 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 assessee 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.

22 In the case of *Chairman, SEBI v. Shriram Mutual Fund and Another* (2006) 5 SCC 361, this Court found on facts that a mutual fund had violated SEBI (Mutual Funds) Regulations, 1996. Under the said Regulations there was a restriction placed on the mutual fund on purchasing or selling shares through any broker associated with the Sponsor of the mutual fund beyond a specified limit. It is in this context that the Division Bench of this Court held that mens rea was not an essential ingredient for contravention of the provisions of a civil act. The breach of a civil obligation which attracts penalty under the Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention. It was further held that unless the language of the provision intends the need to establish mens rea, it is generally sufficient to prove the default/contravention in complying with the statute. In the present case also the statute provides for a hearing. However, that hearing is only to find out whether the assessee has contravened Section 78(2) and not to find out evasion of tax which function is assigned not to the officer at the check-post but to the A.O. in assessment proceedings. In the circumstances, we are of the view that mens rea is not an essential element in the matter of imposition of penalty under Section 78(5).

23 We may mention some of the judgments cited on behalf of the assessee. Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 came for interpretation before this Court in the case of *Sodhi Transport Co. & Anr. Etc. Etc. v. State of U.P. & Anr. Etc. Etc.* (1986) 1 SCR 939. In that case the constitutional validity of Section 28-B of the said Act was challenged. It was held by this Court that since Section 28-B created rebuttable presumption as regards the proof of a set of circumstances, the effect of such a provision was to shift the burden of proving to the assessee who was given an opportunity to displace the presumption by leading evidence. This judgment has no application because the very words contained in Section 28-B required the authorities to raise a rebuttable presumption that the goods must have been sold in the State if the transit pass was not handed over at the check-post. In the present case, we are not concerned with the transit pass. In the present case, there are no words in Section 78(5) similar to Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 which states that if the transit pass was not handed over to the officer at the check-post, the Department would be entitled to raise the presumption that the goods in transit were sold in the State. As stated hereinabove, we have to go by the words used in the section to ascertain whether the legislature has excluded the element of mens rea. It is the statutory law enacted by the competent legislature which can exclude the presumption under common law. We hold that Section 78(5)

excludes the presumption of mens rea which is normally prevailing in common law. Our reasoning is also based on one more factor, namely, that Section 78(5) provides a remedy for recovery of the loss caused to the State by such contravention.

24 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.

25 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.

26 Before concluding, we may mention that in this batch of civil appeals we have civil appeals filed by the Department. These civil appeals relate to cases where specified documents did not accompanied the goods in movement. The lead case in that regard is Civil Appeal No.5240 of 2005 Assistant Commercial Taxes Officer v. M/s. Guljag Industries Ltd. filed by the Department. We make it clear that our judgment is basically confined to cases where blank/incomplete Form 18A/18C had accompanied the goods in movement. Whatever we have stated above is in the context of the incomplete Form 18A/18C travelling along with the goods in movement. However, Civil Appeal No.5240 of 2005 and such other civil appeals filed by the State (Department) are those cases where the documents were not accompanied the goods in movement, like, the bills of sale, bills of transport etc. In Civil Appeal No.5240 of 2005 the facts of which have been reproduced hereinabove, show that the case was confined to documents not accompanying the goods in movement. Therefore, the said appeals stand on a different footing. They have nothing to do with incomplete forms travelling along with the goods in movement. These civil appeals filed by the State (Department) shall be decided in the light of the judgment of this Court in D.P. Metals (supra). However, cases where goods in movement were accompanied by Form No.18A/18C without duly signed but incomplete in material particulars like description of goods shall be governed by the law discussed hereinabove by us.

27 For the aforestated reasons, we hold that Section 78(5) of the RST Act 1994 (Section 22A(7) of the RST Act 1954) is the section enacted to provide remedy for loss of revenue and it is not enacted to punish the offender for committing economic offence and, therefore, mens rea is not an essential ingredient for contravention of Section 78(2) of the RST Act 1994. That, the breach of Section 78(2) would attract the levy of penalty under Section 78(5) in cases where the goods in movement have travelled with an incomplete Form No.18A/18C. We accordingly uphold the judgment of the High Court of Rajasthan in Sales Tax Revision No.1023/2002 dated 14.10.03 (which is annexed as page No.1 of the appeal paper book in Civil Appeal No.5197 of 2005 filed by M/s. Guljag Industries v. Commercial Taxes Officer).

28 In the light of our judgment, we direct the Department to dispose of the cases in accordance with law enunciated by us hereinabove. Accordingly the matters are remitted back to Commissioner (Appeals) to decide the matter in accordance with law enunciated by us hereinabove. The civil appeals, preferred by the State as well as by the assesseees, are accordingly stand disposed of with no order as to costs.