(1967) 03 MAD CK 0044

In the Madras High Court

Case No : Tax Case No. 86 of 1964 (Revision No. 47)

A.B.A. Azeez Khan Sahib APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 29-03-1967

Acts Referred:
Tamil Nadu General Sales Tax Rules, 1959 — Rule 36(2)

Citation : (1967) 20 STC 213

Hon'ble Judges : Veeraswami, J;Ramaprasada Rao, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastri, for the Appellant; K. Venkataswamy, for Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The petitioner is said to be the owner of a lorry, M.D.S. 4105. The lorry loaded with bundles of tamarind, samai and veppakottai was stopped and checked by the Deputy Commercial Tax Officer, Dharmapuri, at about 3 p.m., on 17th September, 1962, at the junction of Pennagaram Road and Salem-Bangalore Road within Dharmapuri town limits. The trip sheet showed the consignor''s name as one Rangiah Chetty and the consignee as "self". The driver had no delivery notes or sale bills with him for the consignment. Contrary to instruction by the checking officer, the driver drove away the vehicle towards Salem and returned to the spot at 10 p.m. The explanation of the driver was that out of fear he had driven away and after seeing the owner of the lorry he had come back. In lieu of confiscation, a penalty of Rs. 750 was levied which the driver paid on the spot. The Tribunal dismissed ,the petitioner''s appeal.

2. The only point urged before us is that under the terms of Section 42(3) with the provisos read with Rules 36(2) and 35 penalty in lieu of confiscation can only be imposed on the dealer or the owner of the goods, and that in the absence of a finding that the petitioner was either a dealer or owner of the goods, the penalty collected from him through his driver cannot be sustained. We do not decide the

factual question whether the petitioner is a dealer in respect of or the owner of the goods in the lorry at the time of check. But the point is whether in the absence of a finding in that regard, the department would be justified in collecting the sum of Rs. 750 in lieu of confiscation.

3. Section 42(3) empowers an officer-in-charge of a check post to seize and confiscate any goods which are under transport by any vehicle or boat if such goods under transport were not covered by a bill of sale or delivery note and such other documents as may be prescribed. Before ordering confiscation the officer has got to give the person affected an opportunity of being heard and make an enquiry in the prescribed manner. Should the officer thereafter consider that the case merits confiscation of the goods, he should give the person affected an option to pay in lieu of confiscation. Though there is no indication in the sub-section that the person affected should be a dealer in respect of or the owner of the goods, the rules appear to make it clear. Sub-rule (2) of Rule 36 of the Madras General Sales Tax Rules, 1959, prescribes the procedure for confiscation of goods authorised by Section 42(3). This sub-rule speaks of "any dealer transporting goods" and the confiscation contemplated by the procedure is of the dealer''s goods. Rule 35(3)(a) also speaks of dealer of goods transporting goods liable to confiscation. Sub-rule (4) of this rule, however, says that such officer before ordering confiscation of the goods shall give the owner of the goods if present in the vehicle or boat, as the case may be, an opportunity of being heard. If such person is not present, the officer shall make such inquiries as he deems fit, ascertain the name and address of such person and give him an opportunity of being heard before ordering confiscation. As we said there is no doubt in these rules that goods are confiscated u/s 42(3) as goods of a dealer or the owner, who is the affected person. It follows that the provision which permits payment of money in lieu of confiscation cannot cover the owner of the lorry unless it is shown that he is the dealer in respect of them or the owner thereof. The Tribunal failed to direct its attention to this aspect and record a finding in that regard.

4. It is contended for the State that the petitioner or his driver having dodged and failed to give any assistance to the department to find the dealer or the owner of the goods and as the driver himself paid the money in lieu of confiscation, the Tribunal''s order should be upheld. We do not think that this is a correct appreciation of the statutory rules. The revenue is not at liberty to accept money from anyone. It can do so only from the owner or dealer of the goods in lieu of confiscation. Nor can the revenue saddle on the owner of the lorry without his being a dealer or the owner of the goods, with the liability to penalty in lieu of confiscation on the ground that he failed to assist the department to find the real dealer or the owner of the goods. To do so will be entirely without authority.

5. The petition is allowed with costs and the order of the Tribunal is set aside. The appeal will stand remitted to it for fresh disposal in the light of this order. Counsel''s fee Rs. 100.

