(1980) 10 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 276 of 1980

Arya Chemicals APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 27-10-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (1982) 49 STC 130

Hon'ble Judges : M.P. Mehrotra, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.P. Goel, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—On 12th October, 1979, the Sales Tax Officer, Mobile Squad, Agra, checked truck No. DHG 3023 belonging to M/s. Punjab Montgomery Transport Company, Agra, by unloading the same at its godown. He found that along with other articles there were 80 bags of zinc oxide in the said truck. Each bag of zinc oxide weighed 25 kg. On inquiries being made, Sri Avtar Singh, owner and driver of the truck, produced only one goods receipt No. 44260 dated 10th October, 1979, for 40 bags of zinc oxide wherein the name of the consignor was shown as Surendra Chemicals and that of the consignee as Arya Chemicals (the petitioner). The receipt indicated that 40 bags of zinc oxide had been despatched by Surendra Chemicals from Delhi to M/s. Arya Chemicals of Ferozabad. The truck driver was unable to produce any document in respect of the remaining 40 bags of zinc oxide. The Sales Tax Officer, Mobile Squad, accordingly felt that 40 bags of zinc oxide which had been brought along with the remaining 40 bags of zinc oxide covered by the goods receipt, in all probability belonged to M/s. Arya Chemicals which had procured those goods outside its books. However, as none of the 80 bags bore any special sign or making and it was not possible to ascertain which 40 of those 80 bags appertained to the goods receipt No. 44260 produced by Sri Avtar Singh, Sales Tax Officer, in exercise of his powers u/s 13-A of the U.P. Sales Tax Act (hereinafter referred to as the Act) seized all the 80 bags of zinc oxide and in due course forwarded a list of the goods seized by him to the assessing authority for imposing penalty in respect thereof.

2. On coming to know of seizure of 80 bags of zinc oxide, the petitioner moved applications before the Sales Tax Officer, Mobile Squad, claiming that it had properly obtained 40 bags of zinc oxide from M/s. Surendra Chemicals of Delhi. There was nothing irregular in the transport of those 40 bags and that the Sales Tax Officer, Mobile Squad, had no jurisdiction to seize them. So far as the remaining 40 bags were concerned, the petitioner had nothing to do with them. Neither did it own those bags nor was it in any way responsible for their being transported through the truck owned by M/s. Punjab Montgomery Transport Company. It, therefore, requested the Sales Tax Officer to release 40 bags of zinc oxide to it.

3. The authorities under the Act, however, took the view that all the 80 bags of zinc oxide which included the 40 bags of zinc oxide claimed by the petitioner could be released to it only on its depositing an amount sufficient to cover the penalty likely to be imposed upon the petitioner, as provided in Section 13-A(6) of the Act. However, the petitioner insisted that 40 bags of zinc oxide be released in its favour without requiring it to pay any amount to the sales tax department and when it failed in its attempt, it filed the present petition under Article 226 of the Constitution and prayed that a writ be issued to the respondents directing them to release 40 bags of zinc oxide in its favour.

4. The case of the petitioner is that the seizure of 40 bags of zinc oxide belonging to it for which all the necessary papers had been produced by the driver of the truck before the Sales Tax Officer, Mobile Squad, was completely without jurisdiction. In the circumstances the respondents are bound to release those bags to the petitioner forthwith and that they are not authorised to detain those bags on the pretext that the petitioner has failed to make the deposit as contemplated by Section 13-A(6) of the Act.

5. The respondents have justified their action in seizing all the 80 bags of zinc oxide by having recourse to the provisions contained in Section 13-A of the Act, the relevant portion of which reads thus :

13-A. Power to seize.-(1) An officer authorised under Sub-section (2) of Section 13 shall have the powers to seize any goods-

(i) which are found in the dealer''s place of business or vehicle or any other building or place; or

(ii) which such officer has reason to believe to belong to the dealer and which are found in any place of business or vehicle or building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in the course of his business...

6. u/s 13-A(1)(i) and (ii) the officer authorised under Sub-section (2) of Section 13 has been empowered to seize from any place of business or vehicle or building or place any goods which he has reasons to believe belong to a dealer and which are not accounted for in the accounts or registers or other documents maintained by him in the course of his business. Such an officer is not authorised to seize such goods which he thinks belong to a dealer and which goods stand accounted for in the accounts, registers or other documents maintained by the dealer in the course of his business. It is not disputed that so far as 40 bags of zinc oxide from out of the 80 bags seized by the Sales Tax Officer, Mobile Squad, were concerned, they belonged to the petitioner and were being transported under proper documents. There is no averment made on behalf of the respondents that those 40 bags of zinc oxide were not accounted for in the books maintained by the petitioner in the course of its business. It may be that in the circumstances even though the petitioner denied his ownership or concern with the remaining 40 bags of zinc oxide, the Sales Tax Officer, Mobile Squad, had reasons to believe that those 40 bags also belonged to the petitioner and that those bags were being dealt with by the petitioner outside its books. In the circumstances, the Sales Tax Officer, Mobile Squad, acquired jurisdiction to seize, u/s 13-A of the Act, only 40 bags of zinc oxide which apparently were being dealt with by the petitioner outside its books. The Sales Tax Officer, Mobile Squad, had no jurisdiction to seize 40 bags of zinc oxide which were covered by proper transport documents and for which there did not exist any reason even to suspect that they had not been accounted for in the books maintained by the dealer in the course of its business.

7. The submission made on behalf of the respondents that as there was no marking on any of the bags of zinc oxide which could help the respondents in determining as to which particular bags appertained to the consignment covered by goods receipt No. 44260, it was open to them to seize all the 80 bags of zinc oxide, does not appeal to us. Merely because a goods carrier is found carrying similar or identical goods in addition to the goods belonging to a particular dealer which are properly accounted for in the account books maintained by it, it does not mean that the goods which are properly accounted for also partake the nature of goods not properly accounted for by it in its account books. The Sales Tax Officer, Mobile Squad, was not in a position to physically connect any particular bag with the goods covered by goods receipt No. 44260. It did not mean that the goods belonging to the dealer which were properly accounted for in its books, etc., ceased to be so accounted for or that none of the 80 bags of zinc oxide were accounted for in the books maintained by the dealer since all the 80 bags of zinc oxide found on the truck contained identical quality and quantity of zinc oxide from the same manufacturer. It was open to the transporter to, as against goods receipt No. 44260, deliver to the consignee any 40 of those bags. The Sales Tax Officer, Mobile Squad, could also treat any of those 40 bags as appertaining to goods receipt No. 44260 and seize the remaining 40 bags.

8. We are, accordingly, of the opinion that in the circumstances of the case, from

out of the 80 bags seized by the Sales Tax Officer, Mobile Squad, he was entitled to seize only 40 bags of zinc oxide and that he had no jurisdiction to seize the remaining 40 bags in exercise of the power u/s 13-A of the Act. His action in reporting more than 40 bags of zinc oxide to the assessing authority for taking action for imposition of penalty is without jurisdiction and the petitioner is entitled to their release forthwith.

9. The learned counsel appearing on behalf of the respondents next contended that as after the Sales Tax Officer, Mobile Squad, reported the matter to the assessing authority under Sub-section (2) of Section 13-A of the Act, he became functus officio and no direction to return the goods can be issued to him. Any such direction must necessarily be addressed to the assessing authority which has not been impleaded as a party in these proceedings. In the circumstances it is not possible to grant any relief to the petitioner. We are unable to accept this submission. It is not disputed that the goods are still in possession of the Sales Tax Officer, Mobile Squad, who seized those goods. The seizing officer has merely forwarded a list of the goods seized by him to the assessing authority. In these circumstances, we find no difficulty in directing the officer seizing goods in excess of his authority, who still continues to be in possession of those goods, to return them to the person entitled to their possession.

10. Before parting with this case we may, however, observe that whereas the case of the respondents is that 40 bags of zinc oxide which were not covered by goods receipt No. 44260 belong to the petitioner and it is the petitioner who is liable to pay penalty in respect thereof, the case of the petitioner is that those goods do not belong to it and that it has nothing to do with those goods. We have in this case, without expressing any opinion on this controversy, proceeded to decide the case on the assumption that even if all the 80 bags of zinc oxide belonged to the petitioner, it still is entitled to have 40 bags of zinc oxide, covered by goods receipt No. 44260, released in its favour. The controversy whether the petitioner has incurred any liability in respect of the remaining 40 bags of zinc oxide can properly be resolved only in appropriate proceedings.

11. In the result, this petition succeeds and is allowed with costs. Respondent No. 2 is directed to forthwith release any 40 bags from out of 80 bags of zinc oxide seized by him to the petitioner. The order made by us shall not affect the proceedings that are being taken for imposition of penalty in respect of the remaining 40 bags of zinc oxide which were validly seized by respondent No. 2.

