(2005) 09 OHC CK 0061

In the Orissa High Court

Case No : Writ Petition (C) No. 8116 of 2005

Baidyanath Prasad APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Orissa Value Added Tax (Amendment) Act, 2005 — Section 74(9)
Orissa Value Added Tax Act, 2004 — Section 74(2), 74(8), 74(9), 76(1), 76(2)

Citation : (2005) 09 OHC CK 0061

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Advocate : Akhil Mohapatra, R.C. Sahoo, J.M. Rout, B.P. Behera and M.S. Sahoo, for the Appellant; Ashok Mohanty, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This writ petition has been filed by the Petitioner, who is the driver of the truck bearing registration No. BR-25-8226, challenging, inter alia, the detention of his aforesaid vehicle under the provisions of Section 74(9) of the Orissa Value Added Tax Act 2005 and the Rules framed thereunder.

2. The brief facts, as delineated in the present writ application, tend to reveal that the Petitioner is the driver of the aforesaid truck, which was transporting groundnut seeds of M/s. Maa Santoshi Bhandar, Dharmasala, District-Jajpur, opposite party No. 3 being consigned in favour of M/s. Shyam Sundar Sitaram, Patna, (in short, the ''consignee'') along with the receipts and Way Bills. It is alleged that the Sales Tax Officer, Unified Check gate, Jamsolaghat, opposite party No. 1, has detained the truck since 27.5.2005. During the course of detention, notice was issued to opposite party No. 3 directing him to show cause and to pay Rs. 88,320/- towards penalty purported to be leviable u/s 74(8) of the Orissa Value Added Tax Act, 2004 (in short, the ''VAT Act''). Accordingly, reply to the show cause notice was filed by opposite party No. 3-consignor on the very same day, i.e., on 28.5.2005, notice was also issued to the Petitioner to

show cause indicating the reasons as to why the vehicle in question should not be seized and confiscated in terms of the provisions u/s 74(9) of the Act. As it appears, against the order of imposition of penalty, opposite party No. 3 filed a writ petition before this Court in W.P.(C) No. 7465 of 2005 and this Court by order dated 9.6.2005 directed release of the goods on opposite party No. 3 depositing a sum of Rs. 45,000/-.

By the present writ application, the Petitioner challenges the notices issued by opposite party No. 1-Sales Tax Officer, Unified Check gate, Jamsolaghat, u/s 74(9) of the VAT Act, vide Annexures-4 and 5. Annexure-5 is the notice issued to the Petitioner directing it to show cause as to why further penalty under the provisions of Sub-sections (1) and (2) of Section 76 of the VAT Act shall not be imposed. We are concerned with the legality of issuance of Annexure-4. As it appears, Annexure-4 has been issued to the Petitioner on the following grounds:

(1) You have not disclosed your branch/booking place located inside the State of Orissa, as revealed form your consignment note dated 26.5.2005.

(2) The consignment note neither bears any serial number, nor there is authenticated seal in support of signature of the Transport operator.

(3) The consignor note is found not to have been checked at any Sales Tax check post/Barrier en-route.

(4) It is surprising that remaining at far-off place at Bihar how the present consignment note could be issued and goods booked on the same date, i.e., 26.05.2005, i.e., the date of issue of the Cash/Credit memo.

(5) Details regarding consignment booked form M/s Maa Santoshi Bhandar on earlier occasions if any need to be furnished.

3. A counter affidavit has been filed in this writ application by the Revenue supporting the action taken by opposite-party No. 1 detaining the truck and issuing Annexure-4. The relevant records pertaining to issuance of notice to the Petitioner vide Annexures-4 and 5 were also produced before this Court.

4. Before going into the merits of the case, let us first look into the provision of Sub-section (9) of Section 74 of the VAT Act. The said provision is quoted below:

(9) Where a transporter, while transporting goods, is found to be in collusion or is likely to be in collusion with a dealer to avoid or evade tax, the officer-in-charge of the check-post or barrier or the officer authorized 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 approval in writing of the Commissioner, may seize and confiscate such vehicle or carrier.

The aforesaid provision makes it crystal clear that where a transporter, while transporting goods, is found to be in collusion or is likely to be in collusion with a dealer to avoid or evade tax, the officer-in-charge of the check-post or the officer authorized 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 approval in writing of the Commissioner, may seize and confiscate such vehicle or carrier. So, the pre-condition for taking action under the aforesaid provision is that the officer authorized to seize and confiscate the vehicle has to be satisfied that there are materials to come to the conclusion that such transport is in collusion or likely to be in collusion with the dealer to avoid or evade tax. Here the consignor is a dealer which was carrying the goods on the strength of Way Bills.

Sub-section (9) of Section 74 of the VAT Act comes within the ambit of incidental or ancillary power of the taxing authority to check evasion of tax. Though in course of argument, learned Counsel for the Petitioner raised a question that it is not within incidental or ancillary power of the taxing authority, but in the present case the competence of the authorized officer having not been challenged, we are not inclined to enter into validity of the above provision. But fact remains that there must be a reasonable proximate connection of transaction of sale between the person transporting the goods and the transporter which must have found to be in collusion or is likely to be in collusion with a dealer to evade tax. This aspect can only be found form the record of the office of the Sales Tax Officer, Unified Check gate, Jamsolaghat which was placed before us. On perusal of the record produced by the Revenue, we do not find anything to come to a conclusion that there is likelihood of collusion or there is collusion between the transporter and the dealer. The order dated 28.5.2005 passed by the Sales Tax Officer, Unified Check gate, Jamsolaghat reads as follows:

Examined the documents, gone through the statement recorded form the driver and employee of the consignor. Prima facie, the dealer is found to have attempted to evade payment of tax in collusion with the Transporter, contravened Clause (b), (c) and (e) of Section 74(2) of the Orissa VAT Act, 2004 and also has under invoiced the price of goods. Hence, issue notice to the Consignor, i.e., Maa Santoshi Bhandar, At/P.O. Bandhadiha, Via Brahmabarada, District-Jajpur bearing TIN No. 21651401582 and to the transporter i.e. M/s. Premier Forwarding Agency, At/Post-Ulao, District-Begusari, Bihar as dictated u/s 74(8) and 74(9) of Orissa VAT Act, 2004 respectively. Also issue notice (show cause) to the consignee i.e. M/s. Shyam Sundar Sitaram, Maroofganj, Patna City, Bihar as dictated.

xx xx xx.

This is the background under which notice has been issued and the vehicle has been detained since then. There is nothing to indicate that the order of approval of the Commissioner in writing was obtained for seizure of the vehicle.

5. On perusal of the records of the Sales Tax Officer, we do not find any collusion as alleged by the Sales Tax Officer attracting the provisions of Section 74(9) of the VAT Act, i.e., transporter has colluded with the dealer for evasion of tax. The grounds indicated in Annexure-4 can at best be said as irregularities for which a

separate penalty proceeding has already been initiated.

6. For the aforesaid reasons, the writ application is allowed and the notices issued under Annexures-4 and 5 are quashed. The vehicle under seizure be released forthwith.

A.K. Samantaray, J.

7. I agree.

