

(2005) 03 CAL CK 0015
In the Calcutta High Court
Case No : W.P.T.T. No. 10 of 2004

Bajaj Parivahan (P) Limited	Vs	APPELLANT
Commercial Tax Officer, Howrah Range and Others		RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Sales Tax Act, 1994 — Section 71
West Bengal Taxation Tribunal Act, 1987 — Section 8

Citation : (2005) 142 STC 393

Hon'ble Judges : S.P. Talukdar, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Sumit Kumar Chakraborty, for the Appellant;S.R. Islam, for the Respondent

Final Decision : Allowed

Judgement

S.P. Talukdar, J.—The present application under Article 226 of the Constitution of India is directed against the judgment and/or order dated March 24, 2004 passed by the West Bengal Taxation Tribunal, hereinafter referred to as "the Tribunal" in the Case No. RN-110 of 2004.

2. The petitioner approached the Tribunal by filing of an application u/s 8 of the West Bengal Taxation Tribunal Act, 1987 and challenged the seizure of 339 bags of various grades of tea by the Commercial Tax Officer, Howrah Range, on March 5, 2004 and the order of penalty dated March 9, 2004 u/s 71 of the West Bengal Sales Tax Act, 1994.

3. Petitioner's grievance, as ventilated before the Tribunal, was that the authority concerned in a mechanical way seized the goods being various grades of tea though documents like challans, invoices and consignment notes in respect of the goods loaded in the truck for transportation outside West Bengal were duly shown.

4. The said case was contested by the present respondents who referring to the road challan dated March 3, 2004 submitted before the Tribunal that such challan does not indicate anything. The challan does not reflect that the 339 packets were, in fact, packages of tea. The challan does not show the name of the consignee and, as such, the authority concerned was not at all convinced with such a sketchy document.

5. Learned Tribunal by the impugned judgment/order dated March 24, 2004 disposed of the matter with the observation that the seizure is valid, though the petitioner has been given liberty to agitate against the order of penalty before the prescribed authority.

6. Learned counsel for the petitioner, Mr. S. Chakraborty has submitted that the Tribunal has failed to appreciate the matter in its proper perspective. He submitted that apart from challan, other documents were also placed before the concerned authority. It has been categorically submitted that the challan produced before the authority should not have been just brushed aside and it clearly indicates that the vehicle being No. WB-23/4177 was carrying 339 packets. Admittedly, such document does not give detailed particulars of the nature of the consignment or the name of the consignor or that of the consignee. The Tribunal was of the view that even in absence of a prescribed form for such challan in the West Bengal Sales Tax Act and Rules, it should be in the nature of a document like way-bill which gives a fair description of the items.

7. Learned counsel, Mr. Chakraborty, has contended that law does not prescribe as to what particulars are to be clearly specified in the challan and the challan in question could very well be taken note of. He has further submitted that the petitioner arranged to produce all other vital documents linked with the said challan before actual seizure and, as such, there could hardly be any justification for such seizure. Learned counsel Mr. Chakraborty invited our attention to the copies of the documents which have been annexed to the application and marked annexure P1. Mr. Chakraborty has then contended that the authority concerned being the Commercial Tax Officer, Howrah Range while proceeding to seize the goods has recorded that he has reasons to believe that the consignment notes and invoices have been fabricated later but no specific reason has been given in such note dated March 5, 2004 in order to justify such apprehension.

8. Mr. Chakraborty relying upon the decision in the case of Road Transport Corporation v. State of Uttar Pradesh reported in [1987] 66 STC 60 (All.), has submitted that the authority concerned could have had no justification to reject the documents produced by the petitioner, may be after interception but certainly before seizure, without assigning any concrete reason.

9. Mr. Chakraborty has contended that in absence of a finding that there was intention to evade the payment of tax and without considering the subsequent production of documents, order of seizure passed by the revenue authority cannot be justified. In this context he has referred to the decision in the case of

Zarghamuddin Ansari (Anwar) v. Commercial Tax Officer reported in (2001) 38 STA 129 (Cal).

10. In the case of Kodak India Limited Vs. Deputy Commissioner of Commercial Taxes and Others, , a division Bench of this Court comprising one of us (J. Talukdar) was of the view that in absence of mala fide intention, there is need for exercise of judicial discretion and in absence of the same, the order imposing penalty cannot be said to be justified.

11. It seems to be settled position of law that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. While exercising discretion, one must, by use of his reason, ascertain and follow the course which reason directs.

12. Our attention has also been drawn to the decisions in the case of Hindustan Steel Ltd. Vs. State of Orissa, , Mahaveer Fancy Stores v. Commissioner of Commercial Taxes in Karnataka reported in [1993] 89 STC 524 (Kar) and Mahaveer Conductors v. Assistant Commercial Taxes Officer reported in [1997] 104 STC 65 (Raj).

13. Mr. Chakraborty has submitted that in absence of concrete finding of deliberate defiance of law, the authority concerned is not justified in imposing penalty. It has been stated that mere fact that supporting documents were produced subsequent to the check does not lead to the inference that those were not genuine documents. It has also been contended that intention to evade tax must be established.

14. On the other hand, learned counsel for the opposite party/ State authorities has drawn attention of the court to the decision in the case of Larsen and Toubro Limited Vs. Additional Commissioner of Commercial Taxes, Zone-1, , in support of his contention that subsequent production of documents does not totally purge the initial lapse. In the case of Assistant Commercial Tax Officer and Another Vs. Ruby Traders, , it was found that the copies of the alleged invoices produced by the dealer on enquiry were found to be not genuine and it was held that it could not be said that the Government was not entitled to recover tax in such an event.

15. In the present case though it was claimed that apart from challan other documents were produced at the time of interception, the only document which was seriously referred to is the road challan. True, the road challan in question does not really give a detailed picture of the articles which were being transported. But this was taken care of by virtue of production of supporting documents like invoices and it cannot be said that the said documents were not produced at the time of seizure. The authority which seized the articles refused to place reliance on the said documents. But the order of seizure unfortunately does not reflect as to why those documents could not inspire the confidence of the said authority. It is not clear as to whether any enquiry was held while discarding those documents and if such an enquiry was held, what was its nature.

16. It follows from the discussion, as made earlier, that there cannot be any presumption of guilt in absence of a concrete finding based on proper enquiry. The authority concerned is also expected to explore as to whether there was any intention to evade tax. Mere fact that road challan did not properly project the detailed particulars of the goods as well as the places, etc., does not always and in all circumstances justify brushing aside of such a document.

17. It follows from the aforesaid discussion that at the time of interception of the vehicle, the authority concerned could only be shown a road challan which admittedly did not disclose the detailed particulars. As discussed earlier, in absence of prescribed form, there is limited scope of challenging such a road challan. It is not disputed that within the prescribed period the petitioner placed certain other supporting materials like invoices, etc., before the authority concerned. But the said documents could not inspire confidence of the said authority and it was not accepted on the ground that such documents were manufactured and fabricated. The materials on record leave little scope for doubt in regard to the fact that nothing much was said by the authority concerned so as to justify its apprehension that such documents were fabricated.

18. There is hardly any material to the satisfaction of the judicial conscience of the court so as to suggest that there had been any proper enquiry before holding that the documents in question were fabricated. This significant aspect does not appear to have been properly dealt with by the Tribunal. We find it difficult to ignore the same and more so, in view of the consistent decisions of the various courts, as referred to earlier.

19. In our opinion, the facts and circumstances leave us with no option but to hold that the seizure was not at all justified.

20. The writ application being W.P.T.T. No. 10 of 2004 be allowed on contest.

21. Accordingly, the order of seizure of goods dated March 5, 2004, the order dated March 9, 2004 passed by respondent No. 1 and the impugned order dated March 24, 2004 passed by the West Bengal Taxation Tribunal, in case No. RN-110 of 2004 be all set aside. Goods seized be released in accordance with the provisions of law.

22. No order as to costs.

23. Urgent xerox certified copy of this order, if applied for, be supplied to the parties after due compliance with the legal formalities.

Aloke Chakrabarti, J.

24. I agree.