(1994) 08 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2670 of 1983

Bharat Singh APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 12-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana General Sales Tax Act, 1973 — Section 37, 38

Citation : (1995) 109 PLR 99

Hon'ble Judges : J.L. Gupta, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; R.C. Setia, Addl. A.G. for the Respondent Nos. 1 and 2 and H.N. Mehtani, for the Respondent No. 3, for the Respondent

Judgement

A.P. Chowdhri, J.—The vires of sections 37 and 38 of the Haryana General Sales-Tax Act, 1973, as amended by the Haryana General Sales-Tax (second Amendment and Validation) Act, 1983 (Haryana Act No. 3 of 1983) is the common question which arises in these writ petitions. The facts giving rise to this question in CWP Nos. 2670, 2674 and 3810 of 1983 are substantially identical. The facts in CWP No. 4775 of 1986 are slightly different and will be adverted to at the appropriate stage.

2. It will be convenient to briefly'' mention the facts in CWP No. 2670 of 1983.

3. The petitioner is a contractor appointed to carry on Railway Booking Agency at Rewari in the State of Haryana. As such contractor he books goods and issues tickets on behalf of the Indian Railway. He also arranges delivery of the goods received from other stations. By the Haryana General Sales-Tax (Second Amendment and Validation) Act, 1983 sections 37 and 38 of the principal Act have been amended. Under the Principal Act, a contractor of Railway Booking Agency was not required to obtain any licence under the provisions of the Haryana General Sales Tax Act, 1973, nor was he required to submit any return of the transaction of goods. Under the amended provisions, however, the

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petitioner is required to obtain a licence on payment of prescribed fee. He is further required to give particulars and information in respect of the transactions of the goods as provided in section 38 of the Act. In case of failure to comply with the provisions of section 38(1) and (2) the petitioner has been rendered liable to pay penalty, which may be equivalent to 20 per cent of the value of the goods in respect of which the particulars and information have not been supplied. The assessing Authority, Rewari, called upon the petitioner vide notice Annexure P-l dated April 13,1983, to apply for the grant of registration certificate in Form ST-40 and to maintain the information in a register prescribed under Rule 54 in Form ST-45 and to submit the requisite information in Form ST-46. The petitioner has challenged the vires of sections 37 and 38 on various grounds. He seeks a writ of mandamus declaring sections 37 and 38 of the Act (as amended) as illegal, ultra vires, unconstitutional and null and void. He further seeks a writ of certiorari quashing notice Annexure P-1.

4. In CWP No. 4775 of 1986 the petitioner is carrying on business under the name and style of Messrs Shivam Agencies. The petitioner was appointed as an agent for Railway Out-Agency for Paonta Sahib in the State of Himachal Pradesh, which is served by the Railway Station Jagadhri in the State of Haryana. The petitioner started his aforesaid business in January 1985 and besides Out-agency office at Badripur Chowk, Paonta Sahib, he has opened an office at Railway Road Jagadhri. He is also maintaining a godown at village Telipura on Jagadhri-Paonta Sahib Road outside the limits of Jagadhri - Yamuna Nagar town. In the course of his business to run the Railway Out-agency he transports goods from Paonta Sahib to Jagadhri railway station and vice versa. He employs the use of motor vehicles and other modes of transport. He is maintaining the records as required by the Railways and also obtains Rahdari receipts while crossing the municipal limits of Jagadhri. The State Government u/s 37 of the Act notified the establishment of a check barrier at Railway Station, Jagadhri on June 10, 1986. On July 14, 1986, the petitioner''s representative was called by the officer Incharge of the said Sales-Tax Barrier and. he was asked to furnish details of the consignees as well as consignors of goods mentioned in the parcel consignment note, booked at Paonta Sahib, the nature of the goods, the weight, destination station, R.R. No. etc. A show cause notice Annexure P-2 was also served on the petitioner for alleged contravention of section 37(2) and 37(4) and the petitioner was directed to appear before the Officer Incharge to show cause why penalty u/s 37(6) be not imposed. The petitioner seeks striking down of section 37 and the notice Annexure P-4(a) and P-4(b). He further seeks a writ of mandamus to direct the respondents not to insist on the production of return in Form ST-39.

5. The question of vires of both sections 37 and 38 is no longer res-integra. In Babu Ram Boliani v. State of Haryana (1984) 57 S T C 17, a Division Bench of this Court held section 38 and Rule 53 of the Haryana General Sales-Tax Rules, 1975 to be ultra vires. The aforesaid decision was affirmed by their Lordships of the Supreme Court in State of Haryana and Ors. v. Sant Lal and Anr. (1993) 91 STC 321, Section 38 having been held to be ultra vires, It is not permissible to

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take any action in accordance there with. To that extent, these petitions must be allowed.

6. Coming to section 37, the apex Court in Delite Carriers (Regd) v. State of Haryana (1990) 77 STC 170 held the provisions of section 37 to be intra vires. The aforesaid decision was followed by a Divisional Bench of this Court in Monga Roadlines (Regd.) v. State of Haryana (1990) 77 STC 171. It follows that section 37 of the Act providing for the establishment of check posts, barriers and inspection of goods in transit, Rule 45 and Forms 38 and 39 of the Rules having been upheld, the petitions must fail in so far as section 37 of the Act is concerned.

7. Mr. R.P. Sawhney, learned counsel for the petitioner in CWP No. 4775 of 1986, contended that since necessary provisions existed in the Railway Manual and those provisions were being complied with, there was no reason why the goods booked at the out-agency needed a special check by the authorities at the sales-tax barrier. Putting of such restrictions according to Mr. Sawhney, were not only totally uncalled for but they would ruin the petitioner''s business.

8. After hearing learned counsel we are of the view that this is a matter which relates to legislative policy. The Court is not called upon to enter into the wisdom in of the legislative policy. The impugned provisions have been upheld by the apex Court and that settles the matter finally.

9. For the foregoing reasons, we partly allow these writ petitions and hold that the petitioners shall not be required to comply with section 38 of the Act. Notices issued requiring compliance are hereby quashed. The action of the State Government in establishing Sales-Tax Check Barrier u/s 37 is, however, upheld. The petitions are disposed of in these terms.

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