(1985) 11 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 289 of 1985 (R)

Bharat Television Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Bihar Finance Act, 1981 — Section 35, 35(1)
Bihar Sales Tax Rules, 1983 — Rule 42(2)

Citation : (1986) PLJR 1032

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : S.B. Gadodia and M.S. Mittal, for the Appellant; John Kundulna, G.P. II and Anil Kumar, J.C. to G.P. II, for the Respondent

Final Decision : Allowed

Judgement

Udai Pratap Singh, J.—The petitioner Messrs Bharat Television Limited has challenged the validity of Annexure 3 whereby the Bihar Sales Tax has been imposed on eighty sets of television which were being transported on truck from Hyderabad to its own branch office situated at Baily Road, Patna. The penalty has also been imposed to the extent of Rs. 94,794. 63p for violation of Section 35 of the Bihar Finance Act (to short ''the Act'') and Rule 42(2) of the Bihar Sales Tax Rule''s, 1983 (in short ''the Rules''). The petitioner Messrs Bharat Television Limited is a registered Company. The Slate of Andhra Pradesh is holding majority of shares and the Company is managed, controlled and run by the State of Andhra Pradesh. The petitioner manufactures televisions and its registered office and factory is situated at Hyderabad in the State of Andhra Pradesh and its branches are located in different States of the country. The Bihar branch is situated at Baily Road, Patna. The petitioner transfers television sets manufactured in its factory from Hyderabad to various branches situated in other States., In the present case, eighty television sets were dispatched from Hyderabad through Deepak Transport Agency under their receipt no. 620109 dated 4.3.1985. The goods were being transported on truck no. 9738 and all relevant papers including Invoice and Central Excise Gate Pass were being carried by the driver of the truck in question. It was a stock transfer from the Head office of the petition :r at Hyderabad to its Branch office at Patna. The value shown in the invoice was Rs. 2,23,675/-- including basic Excise duty. The invoice also discloses that the goods were insured to the Oriental Fire and General Insurance Company and the Central Excise Gate Pass was also mentioned in it. On its way from Hyderabad to Patna, the truck after passing through the different States arrived at Pardih Check Post, Jamshedpur where the driver of the track produced all necessary papers before respondent no. 4. before crossing the aforesaid check post. At the check past, respondent no. 4 (the Commercial Tax Officer, Pardih Check Post, Jamshedpur) asked the driver of the truck to show cause as to why penalty proceeding should not be initiated for violation of section 35(1) of the Act. The vehicle was detained at the check post. Respondent no. 4 imposed penalty of Rs. 94,794. 63p which was three times of the Bihar Sales Tax imposed at the rate of 13% and the addtional tax. The said order, is contained in Annexure 3 which is being challenged.

2. Mr. Gadodia, the learned counsel for the petitioner has rolled on a decision of the Supreme Court in the case of Hans Raj Bagrecha Vs. State of Bihar and Others, and a Bench decision of this Court dated 9.4.1985 passed in C.W.J.C. No. 1079 of 1985 in support of his contention that the order in question was without jurisdiction. It is now settled beyond doubt that in respect of an inter-State trade, Rule 42(2) of the Rules has no application On perusal of Rule 42(2; of the Rules, 1983 it is obvious that it applies only in case of an intra-State trade and not inter-State trade. This point is also covered by another Bench decision of this Court in the case of Bhagwan Prasad v. Officer Incharge Hathidah Check Post. Mokameh (1980 Bihar Revenue and Labour Journal. 110) which was dealing with a case under Rule 38 of the Rules, 1970. The said Rule 38 is just the same as Rule 42(2) of the Rules, 1983 and the present case is concerned with Rule 42(2) of 1983 Rules.

3. In the result, the impugned order contained in Annexure 3 is quashed. Since by an earlier order of this Court, the goods and the truck have already been released to the petitioner, there is no necessity of making any further order except to the extent that the security so furnished for release of truck and the goods in question shall stand discharged. The imposition of penalty is set aside. The writ application is allowed, but there will be no order as to costs.