(1999) 12 SC CK 0038

In the Supreme Court Of India

Case No : C.A. No. 8921 of 1994 C.A. No''s. 9458/94 with 9/95 and 168/95

Commissioner of Sales Tax and Another APPELLANT

Vs

M/s. P.T. Enterprises and Another RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 29

Citation : AIR 2000 SC 339 : (1999) AIRSCW 4466 : (1999) 9 JT 539 : (1999) 7 SCALE 384 : (2000) 1 SCC 112 : (1999) 5 SCR 186 Supp : (2000) 117 STC 315 : (1999) 10 Supreme 171

Hon'ble Judges : S. P. Bharucha, J;N. Santosh Hegde, J;D.P. Wadhwa, J

Bench : Full Bench

Advocate : S. K. Agnihotri and Niraj Sharma, for the Appellant;

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—These appeals raise a common question pertaining to the power conferred by Section 29-A of the Madhya Pradesh General Sales Tax Act, 1958.

2. The facts that we narrate relate to the first appeal (Civil Appeal No. 8921 of 1994).

3. A truck carrying 120 bags of 'supari' belonging to the respondent was checked by the Sales Tax Authorities on 10th January, 1994 near Bijalpur when it crossed the barrier into Madhya Pradesh. It was found by these authorities that the value of the 'supari' as shown in the declaration form, was less than what it should really have been. Accordingly, the authorities issued to the respondent a notice u/s 29-A (11) of the said Act. The notice required the respondent to show cause why it should not be held that the truck was carrying the goods without paying sales tax with the intention of evading sales tax and why penalty in the sum of Rs. 31, 472 should not be imposed. The respondent filed a writ petition in the High Court of Madhya Pradesh to quash the notice. By the order under challenge,

the writ petition was allowed. The High Court held that the provisions of Section 29-A did not "authorise the authorities to question the value of the goods as contained in the documents with reference to market value...".

4. Section 29-A empowers the State government or the Commissioner of Sales Tax to set up check posts or barriers "with a view to prevent or check evasion of tax...." Under Sub-section (4) thereof, every person transporting goods notified by the State Government' must carry with him an invoice, bill or challan or any other document, by whatever name called, issued by the consignor of the goods giving such particulars as may be prescribed. Under Sub-section (6) the transporter is obliged to stop his vehicle at every checkpost or barrier and keep it stationery for as long as may be reasonably necessary to allow the checkpost officer to verify and check the declarations and documents mentioned above, to search the vehicle and inspect the goods and all documents relating thereto which are in the possession of the transporter. Sub-section (8), so far as is relevant here, states:

(8) If the check post officer finds after searching the vehicle and verifying the declaration of other documents relating to the goods, that-

xxx xxx xxx (b) the declaration filed in respect of any goods is false or incorrect, either in respect of the kind of goods or the quantity of goods transported, or the valve thereof; or

xxx xxx xxx such officer may presume, until the contrary is proved, that an attempt was being made to facilitate the evasion of tax in respect of such goods and he may, after recording his reasons therefore in writing a copy of which shall be forthwith supplied to the transporter seize such goods in such manner as may be prescribed.

Sub-section (11) reads thus:

(11). If the check post officer is not so satisfied, he shall record his findings accordingly giving reasons therefore and he shall serve on the transporter a notice in writing requiring him to show cause, ordinarily within fifteen days of the service of the notice, why a penalty as specified in the notice, which shall be equal to three times the amount of tax which would have been payable if the goods were sold within the State on the date of such seizure, should not be imposed upon him for the attempt made to facilitate the evasion of tax on such goods.

(Emphasis supplied)

It is, therefore, clear that every person who transports goods of the kind notified by the State Government, and it is not disputed that 'supari' is notified, must carry with him an invoice, bill or challan or any other document issued by the consignor of the goods that gives particulars relative to the goods. The transporter is obliged to stop the vehicle carrying the goods when required to do so to allow the Sales Tax authority to verify and check the declarations and documents aforestated and to search the vehicle and inspect the goods. If such search and verification shows that the declaration that has been filed in respect of the goods is false or incorrect in respect of, inter alia, the value thereof, the authority may presume until the contrary is proved that an attempt is being made to evade sales tax. He must then record his reasons in this behalf and supply a copy thereof to the transporter. If after considering the transporter's explanation, the authority remains unsatisfied, he is required so to record and to serve on the transporter a notice to show cause why a penalty should not be imposed upon him. In the premises, the High Court was plainly in error when it held that the aforesaid provision does not authorise the authorities to question the value of the goods as contained in the documents with reference to market value. The provision clearly does.

5. The civil appeals are allowed. The orders under appeal are set aside.

6. No order as to costs.