(1972) 05 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3289 of 1971

Dunlop India Limited — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 05-05-1972

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 14B, 3

Citation : (1973) 30 STC 597

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : N.L. Dhingra, for the Appellant; S.C. Goyal and J.C. Batra, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The petitioner-company is registered under the Companies Act with its registered office at Calcutta. It sent some tyres and tubes from Shah Ganj in West Bengal to their sub-depot at Jullundur, through Messrs. Central Goods Transport Corporation, Calcutta, under challan Nos. 53/341-47, dated 29th June, 1970. At the Shamboo Barrier in Patiala District, the vehicle carrying these goods'' was checked by the Taxation Inspector on duty on 6th July, 1970, at 1-00 A.M. The driver produced form ST XXIV indicating the value of the goods at Rs. 50,000. The original invoices and other documents which had been handed over by the petitioner-company to the transport corporation showed that the value of the goods was about Rs. 1,15,518.25. The Taxation Inspector, therefore, concluded that the driver of the truck had filed a false declaration supplied to him by the petitioner-company with a view to evade sales tax on the tyres and tubes which were being carried by him in the truck. The Taxation Inspector recorded the statement of the truck driver wherein he admitted that the declaration produced by him was not in accordance with the invoices and bills given by the petitioner-company to the transport corporation, which he was carrying. The driver wanted time to produce the parties before any order regarding seizure of the goods was passed by the Taxation Inspector, who agreed to grant him time.

2. Shri S. R. Bhutani, a representative of the petitioner-company and Shri Bhagwan Dass, a representative of the Central Goods Transport Corporation, appeared before the officer-in-charge of Shamboo Barrier and explained that a clerk of the Transport Corporation had inadvertently filled in the figure "Rs. 50,000" instead of the real amount and that there was no intention to evade any tax in view of the fact that the original invoices and bills, which were being carried by the driver, showed the correct valuation of the goods. The officer-in-charge of the check post did not feel convinced and seized the goods on the ground that the declarations furnished in form ST XXIV were found to be incorrect. He called upon the general manager of the petitioner-company to attend his office within seven days personally or through an authorised agent to settle the dispute. On 22nd July, 1970, the petitioner-company made a representation to the Joint Excise and Taxation Commissioner, Patiala. But before that representation could be decided, the office manager of the petitioner-company appeared before the officer-in-charge of the check post on 23rd July, 1970, and his statement was recorded. He was shown all the papers from which he worked out the total value of the goods at Rs. 1,23,666.42, out of which goods of the value of Rs. 17,114.07 were taxable at 6 per cent, and the remaining at 10 per cent. It was thus determined that the difference between the declaration made in form ST XXIV and the correct value of the goods was Rs. 73,666.42. The manager of the petitioner-company was allowed the option of getting the goods released on payment of Rs. 7,000 and to furnish a revised declaration showing the value of the goods at Rs. 1,23,666.42. The manager of the petitioner-company paid the amount under protest and got the goods released. Thereafter, a representation was made by the petitioner-company to the Joint Excise and Taxation Commissioner, Punjab, on 8th March, 1971, to revise the order of the Check Post Officer dated 23rd July, 1970, and to order the refund of the amount received by him for releasing the goods seized. On 21st April, 1971, the petitioner-company was informed "legal remedies may please be sought in the case cited as subject" by'' the Excise and Taxation Commissioner. The petitioner then filed the present petition challenging the order seizing the goods and releasing them only on receipt of Rs. 7,000.

3. Written statement has been filed by respondent No. 3, justifying the action taken by the department u/s 14B of the Punjab General Sales Tax Act, 1948, which reads as under:

14-B. Establishment of check posts or barriers and inspection of goods in transit.- (1) If, with a view to preventing or checking evasion of tax under this Act in any place or places in the State, the State Government considers it necessary so to do, it may by notification direct the establishment of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person-in-charge of a goods vehicle or vessel shall carry with him a goods vehicle record, a trip slip or a log-book, as the case may be, and a

bill of sale or a delivery note containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle, or vessel, as the case may be, and produce the same before an officer of the department not below the rank of an Assistant Excise and Taxation Officer checking the vehicle or vessel at any other place.

(3) The owner or. person-in-charge of a goods vehicle or vessel entering the State limits or, leaving the State limits shall also give in triplicate a declaration containing such particulars, as may by prescribed, of the goods carried in such vehicle, or vessel, as the case may be, before the officer-in-charge of the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the officer-in-charge of the check post or barrier before any other officer as mentioned in Sub-section (2) :

Provided where a goods vehicle or vessel bound for any place outside the State passes through the State, the owner or person-in-charge of such vehicle or vessel shall also obtain a transit slip (rahdari) in the prescribed form from the officer-in-charge of the check post or barrier of his entry into the State and deliver it to the officer-in-charge of the check post or barrier at the point of his exist from the State failing which it shall be presumed that the goods have been sold within the State.

(4) At every check post or barrier or at any other place when so required by any other officer referred to in Sub-section (2) in this behalf, the driver or any other person-in-charge of the goods vehicle or vessel shall stop the vehicle or vessel, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer-in-charge of the check post or barrier or the officer as aforesaid to examine the contents in the vehicle or vessel, by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge, who shall also furnish such other information as may be required.

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a rail head or a post office, when so required by the Commissioner or person appointed to assist the Commissioner under Sub-section (1) of Section 3 the driver or owner of any goods carrier or the employee of a transport company shall produce for examination transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded or consigned or received for transport.

(6) Any officer not below the rank of an Assistant Excise and Taxation Officer while acting under this section shall have the power to seize any goods not covered by the documents mentioned in sub-sec-tion (2) and Sub-section (3), (7) The dealer or any person, including a carrier of goods, acting on behalf of the dealer shall not take delivery of, or transport from, any vessel, station, airport or any other place, whether of similar nature or otherwise, notified in this behalf by the State Government any consignment of goods, the sale or purchase of which

is taxable under this Act except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of the tax imposed by or under this Act:

Provided that no place which is a rail head or a post office shall be so notified by the State Government.

(8) Where the declaration made under Sub-section (3) is false in respect of any particulars mentioned therein, the officer-in-charge of the check post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer shall have the power to seize the goods in respect of which the declaration is false:

Provided that an officer acting under Sub-section (6) or Sub-section (8) may, before or after such seizure, give to the person affected an option to pay, in lieu of seizure and in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater.

Explanation.-In this section, the expression ''goods vehicle'' has the same meaning as is assigned to it in Clause (8) of Section 2 of the Motor Vehicles Act, 1939, but does not include road transport plying in collaboration with rail transport.

4. The power of seizure of goods as given by Sub-section (8) of Section 14B, which is challenged by the learned counsel for the petitioner, is unconstitutional in view of the judgment of their Lordships of the Supreme Court in The Check Post Officer and Others Vs. K.P. Abdulla and Bros., In that case, Section 42(3) of the Madras General Sales Tax Act, 1959, was under consideration. That sub-section reads as under :

42. (3) The officer-in-charge of the check post or barrier, or the officer empowered as aforesaid shall have power to seize and confiscate any goods which are under transport by any vehicle or boat and are not covered by,

(i) a bill of sale or delivery note,

(ii) a Goods Vehicle Record, a Trip Sheet or a Log Book, as the case may be, and

(iii) such other documents as may be prescribed under Sections 43 and 44 :

Provided that before ordering confiscation the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner:

Provided further that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation-

(a) in cases where the goods are taxable under this Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater; and

(b) in other cases, a sum of money not exceeding one thousand rupees.

5. In reference to that sub-section, their Lordships observed as under :

Entry 54, List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers ; it specifies a field of legislation and the widest import and significance should be attached to it! Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein : see The United Provinces v. Atiqa Begum [1940] F.C.R. 110 Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, and Balaji Vs. Income Tax Officer, Special Investigation Circle, . A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax. Sub-sections (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By Sub-section (3) the officer-in-charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event, power conferred by Sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in Clauses (i), (ii) and (iii) of Sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under Sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax.

6. In the light of those observations, it has to be held that the provisions of Sub-section (8) of Section 14B of the Punjab General Sales Tax Act are ultra vires the powers of the State Legislature and any action taken thereunder is null and void, being without authority. The learned counsel for the respondents has distinguished that case on the ground that in Sub-section (3) of Section 42 of the Madras Act, the power conferred was "of seizure and confiscation" whereas in the Punjab Act the power is only to seize goods. I do not find any justification for this

differentiation as their Lordships struck down both the powers of seizure and confiscation and the power to release the goods on payment of penalty as prescribed in that sub-section. It is noticeable that the penalty or the compensation amount on the payment of which the owner of the goods can get th''em released is in identical terms in both the Acts and, therefore, the distinction sought to be made by the learned counsel for the respondents is not available.

7. I am further of the opinion that the purpose of Section 14B of the Punjab General Sales Tax Act is to check the evasion of sales tax. If no tax is payable in respect of the goods carried, the question of evasion of tax does not arise and even if in form S.T. XXIV a wrong figure has been stated, it cannot be concluded that there was deliberate attempt of showing the value of the goods at a lower figure than their actual value with a view to avoid payment of tax. The officer-in-charge of the check post did not hold that the goods that were being carried were liable to sales tax and that tax was payable to the State of Punjab. The case of the petitioner is that the goods were being transported from one of its offices in West Bengal to its sub-depot in Jullundur and were not being carried as a result of sale. It has not been decided by the assessing authority whether the goods were brought from West Bengal to the State of Punjab in pursuance of a sale or to stock in the depot of the petitioner-company itself as alleged by it. In the latter case the sales made by the petitioner-company''s depot in Jullundur will be liable to sales tax and unless the goods reach that depot, no liability to sales tax is incurred. From this point of view, it cannot be said that there was an attempt on the part of the petitioner-company or its agent to evade the payment of proper sales tax on the goods that were being carried in the truck, the driver of which presented a declaration in which the value of the goods was not correctly stated. On these facts, therefore, I hold that the officer-in-charge of the check post had no jurisdiction to seize the goods or to impose any penalty or prescribe any composition money on the payment of which the petitioner-company could get the seized goods released.

8. For the reasons given above, I accept this petition with costs and the order of the officer-in-charge of the check post seizing the goods and charging Rs. 7,000 from the petitioner-company for getting them released is quashed and the respondents are directed to refund the amount recovered from it. Counsel''s fee Rs. 200.

