**(1986) 05 CAL CK 0041**

**In the Calcutta High Court**

**Case No :** C.O. No. 17353 (W) of 1985

E.I.T.A. (India) Ltd. and Another — APPELLANT

Vs

D. Dutta and Others — RESPONDENT

**Date of Decision :** 02-05-1986

**Acts Referred:**
Constitution of India, 1950 — Article 19, 301

**Citation :** (1986) 63 STC 416

**Hon'ble Judges :** S.C. Sen, J

**Bench :** Single Bench

**Advocate :** R. Pal, N. Patherya and D. Dey, for the Appellant;A.P. Chatterjee, Senior Standing Counsel, S.N. Dutta, S.N. Bose, A.C. Moitra and S. Dasgupta, for the Respondent

## Judgement

S.C. Sen, J.—The petitioner No. 1 is a company engaged in the business of transport agents and common carriers. The case of the petitioners is that it utilises its transport and on occasion hired transport for fulfilling its commitments to its customers. When trucks belonging to others are engaged by the petitioner-company for carrying consignment of goods from one place to another, the petitioner has no control over the drivers of the trucks.

2. On or about 26th October, 1985, Singhal Brothers, a firm carrying on business in Cochin in the State of Kerala, consigned 97 bags of black pepper and 300 tins of cocoanut oil to M/s. Govind Traders carrying on business at Station Road, Bhagalpur, through Punjab National Bank, Bhagalpur. The aforesaid consignment of 97 bags of black pepper and 300 tins of cocoanut oil were given to M/s. New Gee Tee Carriers, a transport company in Cochin, for delivery of the goods to Bhagalpur.

3. The petitioner-company carries on business all over India and also has office at Cochin. Inasmuch as M/s. New Gee Tee Carriers did not have a branch office at Bhagalpur, it engaged the petitioner-company with full knowledge and consent of the consignor to deliver the goods to the consignee at Bhagalpur in the State

of Bihar. The petitioner hired a truck for carrying the goods from Cochin in the State of Kerala to Ichhapuram in the State of Andhra Pradesh. At Ichhapuram, the goods were transhipped to another truck hired by the petitioner-company for completing the remaining part of the journey to Bhagalpur.

4. The drivers of the trucks hired by the petitioner-company were directed to travel from Ichhapuram to Bhagalpur via Jamshedpur which fall in the State of Bihar. If that route was followed, there would have been no question of any entry into the State of West Bengal.

5. The case of the petitioner is that in disobedience of the specific instructions of the petitioner, the driver of the hired truck bearing police registration No. BRH 3902 attempted to take a short cut to Bhagalpur. It appears that the driver was trying to shorten the distance from Ichhapuram to Bhagalpur by 100 kms. by this process. The vehicle number BRH 3902 was detained at Chichira Check Post, District Midnapore, on 9th November, 1985, at 2-30 p.m. and the consignment of black pepper and cocoanut oil was seized at the check post.

6. It has been stated that the documents were produced by the driver to show that the goods had been actually sold by the consignor at Cochin, in the State of Kerala, and was being delivered to the consignee at Bhagalpur in the State of Bihar. The respondent Nos. 1 to 3 being the two Inspectors of Commercial Taxes at Chichira Check Post and the Commercial Tax Officer, Chichira Check Post, inspected the documents and after stamping the same returned the documents to the driver but declined to release the goods on the ground that the goods had been brought into the State of West Bengal without any transport permit.

7. This writ petition was moved on 28th November, 1985, and an interim order was passed directing the respondents to release the goods of the petitioner along with the truck bearing vehicle No. BRH 3902 seized by the respondents. The petitioner was directed to deposit a sum of Rs. 30,000 by way of security with Mr. Nathmal Himmatsinka, advocate.

8. The petitioners were also severed with show cause notices for imposition of penalty for contravention of the provisions of the Bengal Finance (Sales Tax) Act. The proceedings initiated by the show cause notices were stayed by an interim order dated 13th December, 1985. It may be noted that this interim order was issued because of the inability of the State of West Bengal to file affidavit-in-opposition in time.

9. It has to be noted in this case that there is no allegation of any fraudulent conduct against the petitioner. It is not the case of the respondents that the petitioners were trying to smuggle the goods into the State of West Bengal without any permit and to sell the goods in West Bengal. The copies of the documents that were produced at Chichira Check Post have been annexed to the writ petition. It appears that the petitioner was carrying a permit issued by the Bihar sales Tax authority under Rule 28(2) of the Bihar Sales Tax Rules, 1976. In the permit, the place of despatch was clearly written as Cochin and the

 

destination was stated to be Bhagalpur. The description and value of the goods were also clearly stated in the permit. The mode of transport was given as vehicle No. BRH 3902.

10. A document has also been annexed. Under the Kerala General Sales Tax Rules, form No. 26 in which the name of the dealer has been given as Singhal Brothers and the particulars of the goods to be mentioned have been clearly given. It has also been stated that the goods were to be consigned from Cochin to Bhagalpur. The name and address of the party at Bhagalpur were given as Govind Traders, Station Road, Bhagalpur, C.S.T. No. 1846(C). This document appears to have been stamped and cleared at various check posts including the check posts at Andhra Pradesh and Orissa.

11. Another important factor to be noted in this case is that the consignment had to be delivered to or to the order of the Punjab National Bank at Bhagalpur whose name was mentioned in the lorry receipt. It was stated that the consignment will "under no circumstances be delivered to any one without any written authority from the consignee bank or its orders endorsed on the consignee copy or on a separate letter of authority". In the consignment note, there was an endorsement that "It is intended to use the consignee copy of this set for the purpose of borrowing from the consignee bank" and the name of Punjab National Bank was given as the consignee bank.

12. The genuineness of the documents or the fact that the consignment was meant for Bhagalpur has not been questioned by the respondents. The case of the respondents is that the truck No. BRH 3902 was carrying notified goods in violation of the provision of Section 4B of the Bengal Finance (Sales Tax) Act, 1941, and also Section 6 of the West Bengal Sales Tax Act, 1954. The offence was transporting notified goods though the notified area without proper permit.

13. It has been stated that the cocoanut oil and black pepper were notified goods under the Bengal Finance (Sales Tax) Act, 1941, and under the West Bengal Sales Tax Act, 1954, respectively.

14. It has been contended on behalf of the State that trucks were sometimes found to use spurious documents at the time of entry into West Bengal and the goods that were carried were often sold within the State without payment of any sales tax. In order to prevent evasion of tax on sales within West Bengal Rules 89, 90 and 90A of the Bengal Sales Tax Rules, 1941, have been framed. These rules were necessitated by the fact that goods were being brought into West Bengal for sale from outside the State and the movement of the goods could not be checked once the goods were brought within the State.

15. On behalf of the petitioners, it has been contended that rules cannot possibly apply to a case of inter-State sales or in a case where the goods are merely passing through West Bengal in course of inter-State sales. It has been contended that the rules must be given a restricted interpretation. Otherwise, the rules will have to be declared beyond the scope of the Act and also ultra vires

 

the provisions of the Constitution.

16. The Bengal Finance (Sales Tax) Act, 1941, as has been recorded in the preamble was enacted for the purpose of imposing a general tax on the sale of goods and also a tax on the purchase of certain goods under specified circumstances in West Bengal. Section 4 is the charging section by which the State Government is enabled to issue a notification imposing a tax on every dealer whose gross turnover exceeded a taxable quantum. The word "dealer" has been defined in Section 2(c) of the Act to mean any person who carries on business of selling goods in West Bengal or of purchasing goods in West Bengal for execution of any works contract and includes the Government or any person making a sale u/s 6D. Section 4A and Section 4B have been enacted to prevent evasion of tax. Section 4A deals with evasion of tax by unregistered dealer. Under this section, the State Government may notify that every dealer who imports into West Bengal or manufactures or produces notified goods for sale shall be liable to pay tax on all sales of such notified goods other than those referred to in Section 6D. Section 4B is important for the present case and is as under:

4B. Restriction to prevent evasion.--(1) No person shall transport from any railway station, steamer station, airport, post office or any other place whether of similar nature or otherwise, notified in this behalf by the State Government, any consignment of any notified goods exceeding such quantities and except in accordance with such conditions as may be prescribed. Such conditions shall be made with a view to ensuring that there is no evasion of tax imposed by this Act.

(2) The State Government may prescribe conditions for regulating transport of notified goods from any place, other than those referred to in Sub-section (1), with a view to ensuring that there is no evasion of tax imposed by this Act.

17. The conditions under which goods can be transported have been laid down in Rules 89, 89A, 90, 90A and 91. Rule 89(1) is as under:

89. (1) No person, other than a registered or certified dealer, shall, except in the manner prescribed hereunder, transport from any railway station, steamer station, post office or airport in West Bengal or any other place, notified in that behalf by the State Government u/s 4B, any consignment of notified goods exceeding the quantity specified in Sub-rule (2), despatched from any place outside West Bengal.

18. Therefore, under this rule, the petitioner who was not a registered or a certified dealer could not transport any consignment of notified goods exceeding the quantity specified in Sub-rule (2) despatched from any place outside West Bengal except in the manner prescribed in the Rules. Rule 89(5) provides that any breach of Sub-rule (1) shall be punishable with a fine not exceeding Rs. 500.

89A. No person shall transport any consignment of notified goods from any place, other than those referred to in Sub-section (1) of Section 4B, by any road vehicle except on the following conditions, namely:--

(1) Where such consignment is despatched from any place outside West Bengal and the quantity whereof exceeds the limit specified under Sub-rule (2) of Rule 89--

(a) every such consignment shall be transported by or on behalf of a registered dealer or a certified dealer;

(b) the registered dealer or the certified dealer who transports, or on whose behalf such consignment is being transported, shall make an application in form XXX in duplicate to the appropriate Commercial Tax Officer or Inspector for a permit giving the particulars detailed in Clauses (a) to (d) of Sub-rule (3) of Rule 89. The appropriate Commercial Tax Officer or Inspector, if he is satisfied with regard to the bona fides of the application, shall issue a permit in form XXX-A in duplicate one copy of which shall be made over to the applicant, the other copy being retained as an office copy;

(c) any person transporting any such consignment of notified goods shall, on demand by the officer referred to in the proviso to Sub-rule (1) of Rule 70A, produce the copy of the permit referred to in Clause (b), and the said officer shall, after checking if necessary allow the movement of such quantities of the notified goods as are found permissible under the provisions of the rules.

19. Rule 89A(2) deals with consignment despatched from a place within West Bengal and is not necessary to be considered for the purpose of the present case.

20. It will appear from Rule 89A(1) that the requirement of taking permit is confined to registered or certified dealers. Under Clause (a), only a registered or a certified dealer can bring a consignment in excess of the limit from any place outside West Bengal specified under Rule 89(2). Under Clause (b) the registered or certified dealer has to make an application in form XXX for a permit and the appropriate Commercial Tax Officer, if he is satisfied, can issue a permit in form XXX-A. Under Clause (c) the permit referred to in Clause (b) has to be produced by any person transporting any consignment of notified goods on demand by a duly authorised Officer.

21. On behalf of the petitioners, it was argued that there was nothing in Rule 89 or Rule 89A which required a person who was not a registered or a certified dealer to take a permit for transportation of goods from a place outside West Bengal into the State or through the State of West Bengal. Similarly, Rule 90 which enables the State Government to notify various places for the purpose of regulating road transport dealt with cases of movement of goods by or on behalf of a registered or a certified dealer.

22. Rule 90 is as under:

90. (1) The State Government may notify various places for the purpose of regulating road transport and river or canal transport and may define the

 

boundary of those places notified u/s 4B indicating the area included within such boundaries and demarcate such boundaries by means of barriers or otherwise.

(2) No person shall transport across or beyond the notified area any consignment of notified goods exceeding the quantity specified in Sub-rule (2) of Rule 89 by any road vehicles or by river craft or other vessels or by any other means except in accordance with the following conditions, namely:--

(a) every such consignment shall be transported by or on behalf of a registered or certified dealer;

(b) the registered or certified dealer or his agent transporting any such consignment, shall make an application in form XXX in triplicate to the appropriate Commercial Tax Officer or Inspector, for a permit, giving the particulars detailed in Sub-rule (3) of Rule 89 and the appropriate Commercial Tax Officer or Inspector, after being satisfied about the bona fides of the application, shall issue a permit in form No. XXX-A in triplicate, two copies of which shall be made over to the applicant and the third copy retained in his office;

(c) any person transporting any such consignment of notified goods across or beyond the notified area, shall produce the copies of the permit in respect of that consignment before the officer-in-charge of the notified area, and the said officer shall only then allow the movement of such notified goods mentioned in the aforesaid permit and conforming to the description given therein, and he shall retain one copy of the permit and return the second copy, on which he shall endorse the date on which consignment was transported and shall sign, seal and date such endorsement.

(3) A breach of Sub-rule (2) shall be punishable with a fine not exceeding Rs. 500.

23. The restriction in Rule 90(2) is on movement of goods by or on behalf of a registered or certified dealer. The registered or certified dealer has to make an application in form XXX and procure a permit in form XXX-A in triplicate and copies of the permit will have to be produced at the time of transporting in a consignment of notified goods across or beyond the notified area.

24. It was, therefore, argued that although Rule 89 provides that no person, other than a registered or certified dealer, shall transport any consignment of notified goods from any place outside West Bengal "except in the manner prescribed hereunder", there is nothing in the rules which prescribe the manner in which the notified goods can be transported from a place outside West Bengal by a person who is not a registered or a certified dealer.

25. On behalf of the State, my attention was drawn to Rule 91 which provides as follows:

91. Notwithstanding anything contained in Rules 89 and 90, the Commissioner or

 

any officer appointed u/s 3 to assist him, who has been authorised by the Commissioner in that behalf, may, for good and sufficient reason to be recorded in writing, authorise any person or organisation or philanthropic and charitable institutions or diplomatic personnel to transport any consignment of notified goods exceeding the quantity prescribed in Sub-rule (2) of Rule 89 from any railway station, steamer station, air port in West Bengal or any other place notified u/s 4B or across or beyond the area of a notified place.

26. It is to be noted that Rule 91 is not in aid of Rule 89. The provisions of Rule 91 will apply notwithstanding anything contained in Rules 89 and 90. Moreover, it does not lay down the manner in which the goods in excess of notified quantity can be despatched from any place outside West Bengal. No duty has been cast under this rule upon a person to obtain a permit beforehand. It does not provide the mode and manner of issue of permit. A general power has been given under Rule 91 to the Commissioner or a person duly authorised by the Commissioner to allow any person or organisation or philanthropic and charitable institutions or diplomatic personnel to transport any consignment of notified goods in excess of the prescribed quantity under Rule 89(2) from any railway station, steamer station, air port in West Bengal or any other notified area or across or beyond the notified area. This rule may apply to cases of transportation of goods by a registered or a certified dealer also. Rule 91 does not appear to contain anything more than a general power granted to the Commissioner or an officer appointed by the Commissioner to waive the requirements of Rules 89 and 90, if they think fit, and for good and sufficient reasons which have to be recorded in writing in advance.

27. The charge against the petitioner in the Seizure Case No. 526/M(64)/CCP dated 9th November, 1985, is stated to be contravention of the provisions of Section 6 of the West Bengal Sales Tax Act, 1954. It has been alleged "The driver was carrying 97 bags of black pepper which were seized for lack of requisite S.T. permit.

28. Similarly, the charge in the Seizure Case No. 288/M(41)/CCP dated 9th November, 1985 is stated to be contravention of the provisions of Section 4B of the Bengal Finance (Sales Tax) Act. The allegation is "The driver was carrying 300 tins of cocoanut oil which were seized for lack of S.T. permit.

29. No separate argument was advanced on the provisions of the West Bengal Sales Tax Act either on behalf of the petitioner or on behalf of the respondents. Section 6 of the Act of 1954 lays down that no person shall transport from any railway station, steamer station, air port, post office or any other notified place any consignment of a notified commodity except in accordance with such conditions as may be prescribed. The language is similar to the language used in Section 4B of the Bengal Finance (Sales Tax) Act. In both the sections it has been specifically stated that "such conditions shall be made with a view to ensuring that there is no evasion of tax imposed by this Act". Neither Section 6 of the Act of 1954 nor Section 4B of the Act of 1941 seek to place a complete bar

 

on movement of goods into or across the State of West Bengal, If such restrictions were imposed, it would have been unconstitutional. That is why it has been laid down in both the sections that no person shall transport any consignment of goods "except in accordance with such conditions as may be prescribed". In this case, I have not been shown any condition which has been prescribed for a case like this where goods are being transported from Kerala to Bihar through West Bengal by a person who is not a dealer or a certified dealer. Rule 14 of the West Bengal Sales Tax Rules, 1954, prohibits any person other than a registered dealer from transporting goods notified u/s 6 of the Act of 1954. Rule 14A and Rule 14B make special provisions for diplomatic personnel and also employees of certain organisations like United Nations, World Health Organisation, etc. Similarly, Rule 14C makes special provisions for Khadi and Village Industries Commission. Rule 15 enables the State Government to set up check posts at various places and it has been laid down that no person shall transport beyond check post any consignment of goods mentioned therein except in accordance with the conditions laid down in that rule. The conditions are similar to the conditions laid down in Rule 90 of the Bengal Sales Tax Rules, 1941. This rule applies only to registered dealer. Similarly, Rule 15A applies to a dealer who is inconvenienced by the procedure laid down in Rule 14 or Rule 15. Rule 16 of the West Bengal Sales Tax Rules contains provisions similar to the provisions of Rule 91 of the Bengal Sales Tax Rules, 1941, and enables the prescribed authority to allow goods to be transported across or beyond check post for good or sufficient reasons notwithstanding the provisions of Rules 14 and 15. It does not appear from the Act of 1954 or the Rules framed thereunder or the Act of 1941 and the Rules framed thereunder that there is any provision which requires a person who is not a dealer and who is transporting goods from outside the State of West Bengal to apply for and obtain such permit for transportation of the goods into or across the State of West Bengal.

30. It was argued on behalf of the State that the statute itself has imposed restrictions on transport of any goods across the notified area. Such conditions have been made with a view to ensuring that there is no evasion of tax imposed by the statute. If no specific rule has been framed, the operation of the statute cannot be restricted on that account. The statute will operate irrespective of framing of any rule. I am unable to uphold this argument. There may be a case where power has been given under the statute for the State Government to act in a manner laid down in accordance with the Rules to be framed and the Rules have not actually been framed. In such a case, the Government may exercise the power even in the absence of the Rules in certain situations. But this is quite a different case. Here, the petitioner is being charged with the offence of not obtaining a permit even though the Rules or the Act do not require the petitioner to take a permit, The respondents must clearly establish that there is a requirement of taking permit for transporting goods into West Bengal or across West Bengal when the goods are being brought from some other State by a person who is not a registered or a certified dealer. In the absence of such a rule,

 

the petitioner cannot be charged with infraction of the rule.

31. Moreover, if the rules are construed to mean that no person except a registered or a certified dealer can transport notified goods in excess of the notified limit into or across West Bengal, it will amount to unreasonable restriction on a person''s rights guaranteed under Article 19 of the Constitution as well as the provisions of Article 301 of the Constitution. In fact, the State Government has not made a case that the petitioner not being a registered or a certified dealer cannot bring goods into West Bengal or carry goods across West Bengal at all. On the contrary, the case of the State Government is that the petitioner must have a permit for bringing the goods into the State of West Bengal.

32. Rule 89A which specifically requires permit to be taken for despatch of goods in excess of the notified quantity from outside the State of West Bengal by any road vehicle is limited to registered or certified dealers. It is clearly stated in Clause (a) that every such consignment can be transported by or on behalf of a registered or a certified dealer. Clause (b) lays down the procedure for application for permit and also the manner of issue of permit. Clause (c) requires the person who is transporting the goods, that is the carrier, to produce a copy of the permit which has been issued under Clause (b) at the check post. Similarly, Rule 90(2)(a) lays down that every consignment of notified goods shall be transported by or on behalf of a registered or a certified dealer. The manner in which application for permit has to be made has been laid down in Clause (b) and Clause (c) requires the person who is actually transporting the notified goods to produce a copy of the permit at the check post.

33. Rule 91 has merely empowered the Commissioner or an authorised person to allow notified goods in excess of the notified limit to be transported across or beyond the notified area even without any restriction. This power cannot be exercised as a matter of routine. It can only be used for "good and sufficient reason...recorded in writing". The rule empowers the Commissioner or any authorised person to override or waive the requirement of obtaining permit. It has not laid down any condition for obtaining permit for transporting notified goods. The non obstante clause makes it clear that power is being given under this rule to the Commissioner or an authorised Officer to override the requirements of Rule 89 and Rule 90 and allow goods to be transported in excess of the quantity limited by Rule 89(2). This is an enabling provision. It does not cast any obligation upon a transport carrier or a person who is despatching goods from Kerala to Bihar to acquire a permit before transporting goods across the State of West Bengal. In my view, there is no provision in the rules under which the petitioner could be required to take a permit for transporting goods across the State of West Bengal. The petitioner, therefore, should succeed on this ground.

34. Another argument was made on behalf of the petitioner which is also of substance. It was argued on the strength of two Supreme Court judgments in

 

the cases of the The Check Post Officer and Others Vs. K.P. Abdulla and Bros., and Hans Raj Bagrecha Vs. State of Bihar and Others, that the power conferred u/s 4B of the Bengal Finance (Sales Tax) Act and also u/s 6 of the West Bengal Sales Tax Act, 1954, can only be exercised in respect of levy, collection and recovery of intra-State sales or purchase tax. Such powers could not be utilised for the purpose of ensuring the effective levy of inter-State sales or purchase tax.

35. In fact, there is close resemblance between the case before us and the case of Hans Raj Bagrecha Vs. State of Bihar and Others, which was decided under the Bihar Sales Tax Act, 1959. Section 42 of the Bihar Sales Tax Act provided that no person "shall transport from any railway station...or any other place... notified in this behalf by the State Government, any consignment of such goods, exceeding such quantity, as may be specified...except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act". Rule 31B framed to the effect that no person shall tender at any railway station, etc., any consignment of such goods to any place outside the State of Bihar unless such person had obtained a despatch permit from the appropriate authority. This rule was challenged in that case. The Supreme Court observed at page 12:

The power of the State Legislature is restricted to legislate in respect of intra-State transactions of sale and purchase and to matters ancillary or incidental thereto: it has no power to legislate for levy of tax on sales and purchases in the course of inter-State transactions. The power conferred by Section 42 authorising the imposition of restriction on transport or movement of goods may only be exercised in respect of transactions which facilitate levy, collection and recovery of tax on transactions of intra-State sale or purchase. When Rule 31B seeks to prohibit transport of goods to any place outside the State of Bihar unless a certificate is obtained from the appropriate authority, it seeks to prohibit transport of goods pursuant to transactions which may not even be of the nature of sale or purchase transactions; in any case it restricts transport pursuant to transactions in the course of inter-State trade and commerce. The operation of the rule is not restricted only to transactions in the course of intra-State trade and commerce. The rule authorises restrictions on inter-State transactions and is on that account unauthorised. For the same reasons the notification issued on December 26, 1967, must be regarded as also unauthorised.

36. This case was sought to be distinguished on behalf of the State on the ground that this was a case of despatch of goods outside the State of Bihar and not a case of entry of goods into the State. I fail to see the significance of this distinction. The bar was on notified goods crossing check posts without permit from the State Government. Whether such a bar could be imposed by a State in cases of inter-State transactions was the question before the Supreme Court. The question whether the goods were crossing check posts by way of entry or exit is really not of any significance in that context.

37. In the case of The Check Post Officer and Others Vs. K.P. Abdulla and Bros.,

 

the Supreme Court had to construe the provisions of Section 42(3) of the Madras General Sales Tax Act, which enabled a Check Post Officer to seize and confiscate any goods which were not covered by various documents including documents prescribed under Sections 43 and 44 of the Act. The Supreme Court held that this was not a provision which was ancillary or incidental to the power to tax sale of goods under entry 54 of List II of Schedule VII of the Constitution and was, therefore, invalid. The Supreme Court observed at pages 3-4 as under:

Entry 54 of 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 United Provinces v. Mst. Atiqa Begum [1940] FCR 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.

38. There is no prima facie finding or evidence to show that the goods were sold in West Bengal or were meant to be sold in West Bengal. Therefore, the goods cannot be detained or penalty imposed merely on the assumption that the goods

 

were sold or meant to be sold within the State. Any law or rule framed on that assumption will be beyond the legislative competence of the State.

39. In the premises, I uphold the contention of Mrs. Pal that permit is not required to be taken by a person who is not a registered or a certified dealer for bringing goods from outside the State of West Bengal into the State of West Bengal. No permit is also required to be taken by a person, who is not a registered or a certified dealer, for transporting goods from Kerala to Bhagalpur through the State of West Bengal. No rule to that effect has been framed either under the Bengal (Finance) Sales Tax Act or under the West Bengal Sales Tax Act. There is no prescribed form also for application for such permits or grant of such permits.

40. I also uphold the contention that the statute cannot be construed in a way that will give the State a right to impose restriction on inter-State carriage of goods which are not meant to be sold within the State. The State Legislature has no power to legislate imposing restriction on movement of goods in the course of inter-State transaction or any ancillary matters thereto on the assumption that the goods are meant to be sold within the State.

41. The writ petition, therefore, must succeed. There will be an order in terms of prayer (a) of the petition. There will also be an order directing the respondents to release the vehicle No. BRH 3902 along with all the seized goods forthwith. The proceedings for penalty were commenced against the petitioner and penalty was levied both on Govind Traders and also on East India Transport Association under the provisions of the Bengal Finance (Sales Tax) Act, 1941, and the West Bengal Sales Tax Act, 1954. Those proceedings and the orders passed therein on 3rd December, 1985, are also quashed. Mr. Nathmal Himmatsinka is directed to refund to the petitioner the amount of Rs. 30,000 which were directed to be deposited by the petitioner pursuant to the order passed on 22nd November, 1985.

42. The writ petition is finally disposed of as above. There will be no order as to costs.

 