(2004) 08 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No''s. 8437, 8871, 8872, 9100 and 9101 of 2004

Gautam Ghee Agencies APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Citation : (2004) 08 GUJ CK 0026

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Tanvish U. Bhatt, in Special Civil application Nos. 8437, 8871 and 8872 of 2004 and Sudhir Mehta, for Pradyotsen Shukla in Special Civil application Nos. 9100 and 9101 of 2004, for the Appellant; Siraj Gori, AGP for Respondent Nos. 1-2 in Special Civil Application Nos. 8437, 8871 and 8872 of 2004; Siraj Gori, AGP for Respondent Nos. 1-2 in Special Civil Application Nos. 9100 and 9101 of 2004, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—Rule. Mr Siraj Gori, learned AGP waives service of Rule for the respondents.

In the facts and circumstances of the case, the petitions are taken up for final disposal today.

2. All these petitions are directed against the action of the Sales-tax Officer, Flying Squad Unit-7, Ahmedabad (respondent No.1 herein) provisionally attaching the goods belonging to the petitioners, being ghee tins, u/s 48A of the Gujarat Sales-tax Act, 1969 (hereinafter referred to as "the Act").

3. The case of the petitioners is that the petitioners purchased the goods in question on 30th April/1st May, 2004 from the respective sellers in Delhi/ Haryana and after the goods reached Ahmedabad, they were stored in the warehouse belonging to one S. John & Company in the premises at 10-12,

Sunrise Estate, Sarkhej-Bavla Road, Sarkhej. It is the petitioners'' case that the goods have been purchased in the regular course of business and are duly accounted for in the petitioners'' books of accounts and the petitioners have also made payments for the same. However, without any justification or without giving any notice to the petitioners, respondent No.1 has passed orders for provisional attachment of the said goods. The petitioners have prayed for quashing and setting aside the said orders of provisional attachment and the notices issued by respondent No.1 in this behalf and have also prayed for stay of provisional assessment proceedings u/s 41B of the Act.

4. When Special Civil Application No. 8437 of 2004 came up for preliminary hearing on 16.7.2004, in view of the statement contained in the petition that the petitioner had already paid the sales-tax on the goods in question assuming that such tax was payable, this Court directed respondents to release the ghee seized as per the impugned orders dated 7.6.2004/8.7.2004 upon the petitioner filing an undertaking that the petitioner shall not sell, transfer or encumber its assets without prior permission of the Court.

The other four petitions came to be filed thereafter.

It is the case of the petitioners in Special Civil Application Nos. 8872 and 9101 of 2004 that the concerned petitioners have also paid the sales-tax in respect of the goods in question assuming that they were liable to pay such tax although the concerned petitioners have not effected any sale of the goods in question. According to the petitioner in Special Civil Application No. 8871 of 2004, although the sales-tax was offered on the assumption that the tax may be payable, the respondent authorities have not accepted the same. In Special Civil Application No. 9100 of 2004, the petitioner has paid such tax amount as was demanded by the respondents and the petitioner is ready and willing to pay the balance amount which may be considered as payable in respect of such goods.

5. In response to the notice issued by this Court, the first respondent has filed affidavit in reply in each petition justifying the orders of provisional attachment.

5.1 The deponent has given the following background facts :-

"on receiving certain information by the Enforcement Wing of Sales Tax Department, the Wind which is meant for monitoring the tax evasion with regard to Sales Tax, during an inquiry of another dealer namely one M/s Prakash Marketing of Ahmedabad, Godown No.10, 11 and 12 of Sunrise Estate belonging to one M/s S.John & Co. situated on Sarkhej-Sanand Chowkdi behind Bhavani Motors, Sarkhej, Ahmedabad came to be sealed. In the said premises goods belonging to different entities came to be inspected and during further investigation, racket of tax evasion came to the notice of the respondent authorities and therefore the said premises situated at Sunrise Estate, Sarkhej-Sanand Chowkdi came to be sealed on 7.5.2004. With a view to check the genuineness of the transactions qua such goods and dealer, I state that at the time of investigation, which was carried out in presence of 2 independent panchas, a notice was also posted at the aforesaid premises."

5.2 According to the respondents, the first respondent ascertained the ownership of the godown and called upon M/s S.John & Co. occupying the aforesaid godown on rental basis to give certain details about the names and addresses of the owners of the goods lying in the godown. Inspite of such notice, M/s S.John & Co. requested for time and subsequently came forward with confusing reply and asked for time whenever such details were sought for from him. The first respondent, therefore, drew an adverse inference that M/s S.John & Co. was seeking time to prepare (fabricate) necessary documents so that it can establish the ownership of the goods which were lying inside its godown. Thereafter, the said party approached the respondent authorities stating that the necessary record is lying in the godown premises which were sealed by the authorities. Thereupon, when the respondent authorities opened the seal, the documents pertaining to ownership of the goods were found to be lying in the godown though originally they were not to be found when the inspection was carried out on the first occasion and the godown was sealed. It is further stated in the reply that although stop delivery orders were issued on 8.6.2004, no dealer came forward to claim the goods lying in the godown.

5.3 It is also contended that the bills and lorry receipts produced by the petitioners do not indicate that the petitioners have brought the goods through the check post in the State of Gujarat as the documents submitted by the petitioners before the respondent authorities were not stamped at the border check post. It is, therefore, alleged that the petitioners have contravened the provisions of Rule 62A(1) of the Gujarat Sales-tax Rules, 1970 and the petitioners have not submitted necessary Form 45A at the border check post at time of entering into the State of Gujarat.

5.4 It is further contended that since all the petitioners claim to have entered into the transactions for purchase of ghee from the concerned dealers outside the State of Gujarat for the first time, the respondent authorities have reason to doubt the genuineness of the transactions and to infer that the transactions were intended to evade the payment of sales-tax. It is further contended that the petitioners have also contravened the provisions of Section 38(b) of the Act by changing their respective place of business or opening a new place of business for storing the goods in the godown in question.

5.5 As regards the sellers of the goods at Delhi, it is stated that on inspection by the respondent authorities, M/s Satyam Sales Corporation of New Delhi was found to be a non-existing firm which was once upon a time registered by the Delhi authority. However, the said firm is not filing its return before the Delhi Sales-tax authority for the last more than three years and the business premises of M/s Satyam Sales Corporation were found to be closed for many years as informed by the Sales-tax authority, Delhi vide letter dated 28.7.2004.

Similar averments are made in the affidavits in the other four matters.

6. On the basis of the aforesaid averments and submissions made in the reply affidavits, Mr Siraj Gori, learned AGP has vehemently opposed the petitions and submitted that when the respondent authorities have provisionally attached the goods u/s 48A of the Act, this Court would not entertain the petitions more particularly when the petitioners have an alternative remedy u/s 65 of the Act.

7. On the other hand, Mr Tanvish Bhatt and Mr Sudhir Mehta, learned counsel for the petitioners have submitted that ghee is a perishable commodity and in view of the present festival days, if the goods continue to be attached, the petitioners will suffer irreparable loss in business when the petitioners have already paid the sales-tax at the rate of 8% in respect of the goods in question in advance even though the petitioners are still to sell the same. Hence, there is no justification for the respondents to keep the goods under attachment.

On merits of the matter, it is submitted that the petitioners have purchased the goods from the respective sellers in Delhi/Haryana and that the goods have been brought into the State of Gujarat through transporters whose receipts are produced before the authorities. As regards the alleged breach of Rule 62A, it is submitted that the same is based on the provisions of sub-section (3)(c) of Section 59A of the Act which is required to be read as a part of Section 59A conferring power on the officers at the check post to inspect any vehicle carrying goods and to demand various documents as indicated in Section 59, but the Section does not cast any obligation on the importer or transporter to obtain any document from the check post nor to get any endorsement on a declaration as contended by the respondent authorities.

As regards the alleged breach of Section 38(b), it is submitted that Rule 21 owning its origin to Section 38(b) gives the dealer time of 60 days to inform the authority about the change of place of business or opening a new place of business. In the first place, the petitioners have not changed the place of business as they continue to carry on the business at the place/s mentioned in the certificate/s of registration of the respective petitioners. The temporary storage of the goods at a warehouse outside the municipal limits before the goods are brought to the registered place of business within the municipal limits cannot amount to breach of the provisions of Section 38(b) of the Act.

8. Having heard the learned counsel for the parties, we find considerable substance in the submissions made on behalf of the petitioners and are inclined to grant their prayer for directing the respondent authorities to release the goods in question upon payment of sums equivalent to the sales-tax which may be payable by them in respect of the goods in question on the assumption that the petitioners would be liable to pay sales-tax.

9. As regards the alleged breach of Rule 62A and Section 59A, the same are set out hereunder :-

Rule 62A.- Declaration under sub-section (3) of section 59A.

(1) The driver or other person in charge of the vehicle, boat or animal carrying goods shall give to the officer in charge of the check post or the barrier a declaration relating to the particulars of the goods carried in the vehicle or boat or on the animal in Form 45-A.

Sec. 59A Inspection of goods in transit, etc.

(vehicle includes boat or animal)

(1) If the State Government considers that with a view to preventing evasion of tax in any place or places in the State, it is necessary to do so, it may, by notification in the Official Gazette, direct that such number of check-posts shall be set up or such number of barriers shall be erected at such places as may be specified in the notification.

(2) At every check-posts or barrier set up or erected under sub-section (1), the driver or any other person in charge of any vehicle, shall stop the same, and keep it stationary so long as may reasonably be necessary, and allow the officer-in-charge of the check-post or barrier to examine the contents in the vehicle and inspect all records relating to the goods carried in the vehicle which are in the possession of such driver or other person in charge who shall, if so required, give his name and address and the names and addresses of the owner of the vehicle as well as of the consignor and consignee of such goods; and where any of the consignors or consignees is a dealer registered under this Act or the Central Sales Tax Act, 1956 or relevant Act in any other State the driver or any other person in charge of the vehicle, shall also give the number and place of issue of the certificate of registration, if any, of such dealer.

(3) The driver or the person in charge of a vehicle carrying goods shall-

(a) carry with him a log book, a bill of sale or delivery note and such other documents relating to the goods carried in the vehicle and containing such particulars as may be prescribed and the driver or person in charge of a transport vehicle shall, in addition, carrying a goods vehicles record and a trip sheet;

(b) produce the same when requested to do so by the officer-in-charge of the check-post or barrier;

(c) give to the officer-in-charge of the check-post or barrier a declaration relating to particulars of the goods carried in the vehicle in such form as may be prescribed and keep one copy of declaration with him.

Sub-section (4) confers on the Officer-in-charge of the check-post or barrier power to seize the goods if the declaration mentioned in sub-section (3)(c) is false or the goods are not covered by the documents in sub-section (3)(a). Sub-section (5) gives power to the officer in-charge of the check post/barrier to release the goods after recovering tax and penalty or on taking security.

9A. Section 59AA of the Act requires transit pass to be obtained for transit of goods by road through the State where any vehicle carrying goods coming from any place outside the State is bound for any other place outside the State and further requires that the transit pass obtained from the officer in charge of the check post after entry into the State is required to deliver the same to the officer in charge of the last check post before it exits from the State.

10. A perusal of the aforesaid provisions indicates that with a view to preventing evasion of tax in any place or places in the State, the State Government may set up check posts/barriers and on every check post or barrier set up, the driver (including any other person in charge of the vehicle) shall stop the same and keep it stationary to allow the officer in-charge of the check post to examine the contents in the vehicle and inspect all records relating to the goods carried in the vehicle and such driver shall, if so required, give his name/address and the names/addresses of the owner of the vehicle, consignor/consignee of the goods and the details about the registration of the consignor/consignee if he is a dealer registered under the local Sales-tax Act or the Central Sales-tax Act. The driver is also required to carry with him the invoice/delivery note and such other documents relating to the goods and the driver shall produce the same when requested to do so by the officer in-charge of the check post/barrier and give to such officer a declaration relating to the particulars of the goods carried in the vehicle in such form as prescribed and keep one copy of declaration with him.

11. It is thus clear that the provisions empower the Government officers to stop a vehicle and to inspect the goods and demand documents relating to title to the goods and the driver or the person in-charge of the vehicle is obliged to produce such documents when requested to do so by the officer of the check post/barrier. The question of the driver/person in-charge of the vehicle giving a declaration relating to particulars of the goods carried in the vehicle to the officer in charge of the check post would arise when the officer at the check post decides to inspect the vehicle and the goods being carried therein and to demand production of documents such as invoice or delivery note, etc. If the driver stops the vehicle to allow the officer in charge of the check post to examine the vehicle and the contents in that vehicle and to inspect the records relating to the goods being carried in the vehicle, but the officer at the check post does not examine the goods or ask for the documents, it cannot be said that the driver/person in-charge of the vehicle is still duty bound to give any declaration to the officer in-charge of the check post relating to the particulars of the goods being carried in the vehicle.

12. It is also required to be noted the object of inserting Section 59A is to prevent evasion of tax in any place or places in the State of Gujarat. The procedure of giving a declaration at the check post assumes greater significance in case of the goods being carried outside the State because the rate of sales-tax is usually lower for inter-State sales as compared to the intra-State sales. The provisions of Section 59A would, therefore, enable the sales-tax authorities to verify whether the goods which originated in the State of Gujarat and were

intended to leave the State of Gujarat have actually left the State of the Gujarat or have remained within the State of Gujarat. Section 59AA applies to those goods which entered the State of Gujarat for the purpose of going outside the State of Gujarat.

However, as far as the goods coming into the State of Gujarat are concerned, there would be no such significance and, therefore also, our interpretation of the provisions of sub-section (3) of Section 59A does not militate against the scheme of the Act.

In view of the above discussion, absence of any declaration having been furnished to the check post when the goods entered into the State of Gujarat cannot per se brand the goods or any transaction relating thereto as illegal. If at all, it deprives the importer of goods into the State the benefit of strong evidence of such import which he will have to make up by producing some other credible evidence.

13. As regards the alleged violation of the provisions of Section 38(b) of the Act, it is true that the term "place of business" as defined by Section 2(1) of the Act means any place where a dealer carries on business and includes a warehouse, godown or other place where a dealer stores his goods and any place where he keep his books of accounts. However, as stated by the learned counsel for the petitioners, Rule 21 framed for implementation of the above provision gives the dealer sixty days'' time to inform the authorities. In the instant case, it is not shown that the goods had remained at the godown in question for more than 60 days before the inspection in question was carried out. It is, therefore, not necessary to go into the other submission made by the learned counsel for the petitioners that when the goods are stored at a warehouse outside the municipal limits for a limited period before they are taken to the place of business within the municipal limits, there would not be violation of the provisions of Section 38(b) of the Act.

14. Coming to the gravamen of the department''s case against the petitioners, it is alleged by the department that because the department noticed some tax evasion by another dealer called M/s Prakash Marketing of Ahmedabad whose goods were stored in the godown belonging to M/s S.John & Co. i.e. the same godown where the petitioners'' goods were stored, the racket of tax evasion came to the notice of the respondeat authorities and, therefore, the entire godown came to be sealed on 7.5.2004. However, after stating that the godown was so sealed to check the genuineness of the transactions qua the goods stored in the godown and the dealers concerned, while an adverse inference is drawn against M/s Satyam Sales Corporation of New Delhi, the authorities have not disputed the petitioners'' assertion that the dealer in question is a registered dealer with the Delhi Sales-tax authority. If, therefore, the petitioners claim to have purchased the goods from such a registered dealer and when the petitioner have out of commercial expediency deposited the amounts of sales-tax or shown complete willingness to do so, the authorities are not justified in insisting that

the provisional attachment must continue more particularly when the goods in question are a perishable commodity being ghee, and when the petitioners are registered dealers in their own right who are keen to sell the same during the current festival season. Merely because the transaction in question is alleged to be the first such purchase by the petitioners, it cannot be said that the transaction is not genuine. We hasten to clarify that we do not propose to go into the merits of the controversy, but these observations are made for the limited purpose of examining the controversy whether continued provisional attachment of the goods in question (even when the petitioners have paid or are willing to pay sales-tax in respect of the goods on the assumption that the petitioners are liable to pay such tax), would be illegal and, therefore, whether the petitioners are required to be granted appropriate relief.

15. At this stage, we may also mention that in SCA No. 8871 of 2004, the petitioners claim to have purchased the ghee tins from Kailash Dairy Products Ltd. of Meerut with branch office at New Delhi vide invoice dated 1.5.2004 (Annexure "A") and from Sterling Agro Industries Ltd. vide invoice dated 30.4.2004 (Annexure "A"). The petitioners have also produced the transport receipts issued by the concerned transporters which had transported the goods in question from Delhi to Ahmedabad. It is not the case of the respondent authorities that they have found any irregularity or illegality with respect to the said dealers.

In the aforesaid background, the case of the respondents that they are entitled to continue to attach the goods till the respondent authorities take their own time to complete the investigation into the alleged irregularities or illegalities, would cause unnecessary and irreparable loss to the petitioner''s business and, therefore also, in the facts and circumstances of the case, we are of the view that the continued attachment of the petitioners'' perishable commodity deserves to be quashed and set aside. The respondents have not shown as to why such orders are necessary for the protection of the revenue when the petitioners are registered dealers in the State of Gujarat having their assets in the State of Gujarat.

16. The petitioners have also challenged the provisional assessment u/s 41B of the Act. The petitioners have contended that the said power can be invoked only when the dealer has evaded tax, but the expression "evasion of tax" as interpreted in Batliboi & Co.Ltd. vs. Sales-tax Officer (2000) 119 STC 583, conveys mens rea on the part of the dealer. The expression conveys a meaning that the dealer by infringing the law has been trying to avoid payment of tax in due time.

We are not going into this question at this stage because it would be open to the petitioners to appear before the authorities and raise all available defences and also because we are directing the respondents to release the goods as per this order.

17. In view of the above discussion, The petitions are allowed. The continued provisional attachment of the petitioners'' goods - ghee tins is quashed and set aside. Subject to the condition that the petitioners have paid or as and when the petitioners pay the amounts equivalent to the amounts of sales-tax payable in respect of the goods in question, the respondents shall release the goods in question within twenty four hours from the time of payment of sales-tax/balance amount of sales-tax or upon production of the necessary challans evidencing such payments.

Rule is made absolute to the aforesaid extent with no order as to costs.