(1985) 10 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 326 of 1985

Gopal Agency APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 15-10-1985

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

Citation : (1987) 65 STC 323

Hon'ble Judges : V.K. Khanna, J;A. Banerji, J

Bench : Division Bench

Advocate : Vinod Prasad, for the Appellant; Standing Counsel, for the Respondent

Judgement

A. Banerji, J.—An interesting question of law arises in this case and having heard learned counsel for the parties we are disposing of this writ petition in accordance with the provisions of Chapter XXII of the Rules of the Court.

2. The writ petition challenges the authority of the respondents to impose and charge penalty on the trucks engaged by the petitioner only because the trucks failed to clear the specified check post in the transit pass within the stipulated time and date. It was contended that the Sales Tax Act, 1948, was enacted to provide for the levy of a tax on the sale or purchase of goods in U.P. and since there was neither any sale nor purchase of the goods carried by the truck in question inside the State of Uttar Pradesh. Further neither any tax nor any penalty was leviable. The provisions of the Sales Tax Act did not provide for levy of penalty u/s 15-A of the Act. It was further contended that the imposition of penalty u/s 15-A(1)(r) and Section 14(1)(e) of the Act were bad in law, their vires were also questioned.

3. The petitioner engaged trucks for carrying coal from the States of Bihar and Bengal to the State of Madhya Pradesh and its trucks travel over the State of Uttar Pradesh. The trucks generally enter the State of Uttar Pradesh at the Naubatpur check post in the district of Varanasi and obtained a transit pass u/s

28-B read with Rule 87 of the U.P. Sales Tax Rules, 1948. The pass contains the date of entry and the time and date of its exit at the specific check post before entering into the State of Madhya Pradesh. In the present case the transit pass mentioned the sales tax exit barrier at Fatehpur Sikri, District Agra. The petitioner''s truck No. RRG 9624 which was scheduled to cross the exit barrier on or before 21st January, 1984; reached the exit post on 6th February, 1984 and a penalty of Rs. 700 was imposed for the delay. Another truck No. UPF 4925 was to cross the aforesaid exit barrier before 8th June, 1984, but could not do so due to various reasons. The result was that the Sales Tax Officer at the check post imposed a penalty. Since the penalty amount could not be paid the truck and the coal loaded therein were not allowed to cross the barrier although the quality and the quantity of coal remained intact and had not been disposed of anywhere within the State of Uttar Pradesh. The petitioner had thereafter filed this writ petition.

4. On behalf of the respondents a counter-affidavit was filed. It was stated that in regard to truck No. RRG 9624 there was inordinate delay in reaching the exit check post. The driver was given a show cause notice to explain as to why the penalty should not be levied for the delayed submission of the transit pass. The driver of the vehicle in his explanation on oath stated that he was unable to give answer and agreed to pay the penalty. On his paying the amount of penalty imposed he was allowed to proceed. However, in regard to truck No. UPF 4925. it was stated on the basis of the record available with respondent No. 4, the Sales Tax Officer, exit check post, that neither the transit pass of the above vehicle nor the vehicle with goods was detained between 30th May, 1984, to 30th June, 1984, at the check post. However, it was stated that if the vehicle along with the goods and the transit pass issued by the entry check post does not reach the exit check post, there is a presumption that the goods carried on the vehicle were sold in the State of Uttar Pradesh. A show cause notice was issued and the person-in-charge of the vehicle could have give an explanation for the delay on the legal submission and the stand of the respondents was that the Act permitted the imposition of penalty for non-compliance of the provisions of Sections 14 and 15 of the Act.

5. In the rejoinder-affidavit, it was disclosed that the truck of the petitioner No. UPF 4925 reached the exit barrier and was asked to pay penalty before it was allowed to cross the barrier. On the refusal by the driver to pay the penalty, respondent No. 4 did not allow the truck to cross the barrier and as such the truck had to remain in Uttar Pradesh. If the records of the check post did not have any entry it is because they did not allow the truck in question to cross the barrier.

6. The first point urged by the learned counsel for the petitioner pertained to the vires of the provisions of Section 15-A(1)(r) and Section 14(1)(e) of the Act. The main argument was that the object of the Act was to levy sales tax on sale or purchase of certain commodities in the State of Uttar Pradesh. And since in the

present case there was neither any sale nor purchase of the material carried in the truck within the State of Uttar Pradesh, no sales tax nor any penalty could be imposed. It was further urged that the imposition of penalty for delayed reaching the check post infringed the provisions of Article 301 of the Constitution and amounted to a (restriction on the) freedom of trade and business within the meaning of Article 19(1)(g) of the Constitution. We are not impressed by this line of argument. It is well-settled that the power to levy tax also empowered the authorities under the Act to do all, i. e., necessary to prevent evasion of sales tax. Any goods entering the State of Uttar Pradesh from another State in the Indian Union would be liable to pay sales tax on a presumption that it was intended to be sold within the State of Uttar Pradesh. In order to exempt payment of such tax transit passes were provided to such trucks which were carrying goods through the State for use/consumption in another State. The provision in regard to the transit pass is contained in Rule 87 of the Sales Tax Rules. It provides for a transit pass in form XXXIV. This form had to be filled up by the driver or the owner of the truck and had to indicate the date and time by which the truck would reach the specific exit post with the same goods as it had at the entry point, within the time and date indicated in the transit pass. The provision of Section 14(1) (e) lays down that if any person who acts in contravention of the provisions of the Act or the Rules made thereunder, shall be liable for the recovery of tax and other dues and may also be punished with fine. Similarly the provision of Section 15-A(1)(r) lays down that where the assessing authority is satisfied after such inquiry, as may be deemed necessary, direct that such dealer or other person otherwise acts in contravention of the provisions of the Act or the Rules shall pay, by way of penalty, in addition to the tax legally payable by him. It is clear from the above that the Act provides for the imposition of penalty u/s 15-A(1)(r) of the Act on a person who otherwise acts in contravention of the provisions of the Act and the Rules. Rule 87 provides for the obtaining of a transit visa and complying with the requirements of the said rule. This means that the date and time mentioned in the present visa have to be complied with by the driver or the owner of the vehicle. If it is not complied with (within the date and time mentioned in the transit pass) it would amount to non-observance of the conditions mentioned in the transit pass and as such there would be a contravention of Rule 87. The argument of the petitioner that neither any tax nor any penalty could be levied on the petitioner is, in our opinion, not tenable. In all tax laws, the power to impose tax carries with it the analogous power to prevent evasion of tax, as well as enforcement of the provisions of the Act. The provisions of Section 14(I)(e) and Section 15-A(1)(r) are such powers which the sales tax authorities necessarily must have to prevent the evasion of tax. It is not necessary that the penalty should be levied only in the case of evasion of tax-power must be vested in the authorities to prevent such an event. These provisions only empower the sales tax authorities to carry out the object of the Act.

7. Learned counsel for the petitioner further contended that the above provisions

give an arbitrary power to the Sales Tax Officer at the check post to detain the vehicle and the goods until the penalty was paid. Often the goods had to reach their destination within a specified time and if this was not complied with it entailed serious consequences. The delay on the way. may be caused by very many factors over which the truck driver may not have any control, e.g., floods, breach of road, accident, break-down, etc. We agree that such incidents may delay the progress of a truck in its journey towards the specified exit point. Before the Sales Tax Officer at the check post imposed a penalty, he issues a show cause notice. The driver of the vehicle or the owner of the vehicle or his agent have the option to reply to the notice. It is only when the Sales Tax Officer is satisfied that the explanation offered by the driver of the vehicle or the owner/ agent of the goods carried in the trucks are not satisfactory that he imposes the penalty u/s 15-A(1)(r) of the Act. Reference may be made to the specific provision in Section 15-A(1) after the provision contained in Sub-clause (r). The relevant provision reads as follows :

It may, after, such an inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him.

8. This provision makes it clear that penalty is to be imposed only after an inquiry. Inquiry means after giving an opportunity to the party concerned to explain and show cause. The imposition of a penalty without affording an opportunity to show cause would be hit by the rules of natural justice. In the present case there is no averment that there was any breach of the rules of natural justice. We are, therefore, unable to hold that the rule is arbitrary or capricious. It is, therefore, obvious that it is not obligatory on the part of the Sales Tax Officer at the check post to impose penalty in every case of delay. He has the power not to impose penalty if he is satisfied that the driver has a just cause for the delay in reaching the check post. Since the object of the Act is to impose sales tax and prevent evasion of sales tax, the Sales Tax Officer is not bound to levy penalty merely because there is a delay in reaching the check post. Every case of delayed reaching the check post may not be penalised if the driver of the truck in question has a reasonable explanation for the delay. If the quantity and the quality of the goods at the entry check post remains the same even at the exit check post, it obviously means that there is no attempt to evade sales tax. In this view of the matter it would be quite justified for the sales tax authorities at the exit check post not to impose penalty if the explanation for the delay is plausible or reasonable. In the present case there is no material on the record as to when the truck in question reached the exit check post at Fatehpur Sikri. Unless the petitioner presents itself along with the specific goods at the check post, the question of considering whether any penalty is to be levied or not, cannot be considered.

9. In view of what has been stated above, we think the ends of justice would be met if the petitioner presents the specific goods at the check post, at the earliest

and offers an explanation for the delayed reaching at the check post. If the specified goods are there in the truck and the explanation offered by the driver owner/agent of the goods is reasonable or plausible, the Sales Tax Officer shall allow the truck to pass without imposition of any penalty. In considering the delay the period during which the writ petition remained pending in this Court, shall be excluded from consideration. We, therefore, dispose of this writ petition with the above directions. There will be no order as to costs.

