

(1982) 05 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 313, 414 to 421, 436 to 446, 531, 532, 607, 658 and 659 of 1980 and 150, 407, 426, 549, 646, 647, 699, 753 to 755, 764 to 766, 835 and 889 of 1981

Goyal Commercial

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-05-1982

Acts Referred:

Constitution of India, 1950 — Article 19, 301

Citation : (1983) 52 STC 184

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : Sushil Harkauli, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Seth, J.—This group of writ petitions challenges the constitutional validity of, (i) Section 28-B of the U. P. Sales Tax Act (hereinafter referred to as the Act) and (ii) Rule 87 and form XXXIV of the U. P. Sales Tax Rules.

2. The petitioners carry on the business of purchase and sale of coal and transportation for hire. The case set up by the petitioners is that they purchase coal from collieries located in the States of West Bengal, Bihar and Madhya Pradesh and transport it to the States of Punjab, Haryana, Rajasthan, etc. The petitioners approached the Coal India Limited or its subsidiaries who authorise the petitioners to purchase coal from specified collieries. Coal from the collieries on its way to the States of Punjab, Haryana, etc., has to pass through the State of Uttar Pradesh. Since railway wagons are not easily available at colliery railway stations, the petitioner transported coal by road in trucks. The trucks enter the State of Uttar Pradesh through the Robertsganj check post in the district of Mirzapur or through Naubatpur check post in the district of Varanasi. Due to shortage of diesel and also because transport by rail is cheaper, the petitioners,

subject to the availability of the railway wagons, transport coal by rail from railway stations of Varanasi, Mirzapur and Allahabad. Coal brought in by truck is unloaded in the vicinity of the aforesaid railway stations and then transported by rail to the petitioners' depots in Haryana, Punjab, etc., as and when wagons are available.

3. u/s 28-B of the Act read with Rule 87 of the Rules, when a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver, or other person-in-charge of such vehicle must obtain in the prescribed manner a transit pass from the officer-in-charge of the check post or barrier and deliver it to the officer-in-charge before his exit from the State, failing which it is presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle. The grievance of the petitioners is that transit pass as required by Section 28-B of the Act is not issued to them on the ground that the vehicles are not bound for any other place outside the State. It implies that the petitioners must necessarily transport coal to Haryana, Punjab, etc., by road. This amounts to an unreasonable restriction on the movement of goods within the territory of India and the provision is, therefore, violative of Articles 301 and 19(1)(g) of the Constitution.

4. The stand taken by the petitioners is wholly untenable. The petitioners themselves purchase coal from collieries situated outside the State of U. P. When the vehicles enter the State of Uttar Pradesh, the known destination of the vehicles is a place situated in the State of Uttar Pradesh and coal is unloaded within the State of Uttar Pradesh. The vehicles carrying coal are not bound for any other place outside the State of Uttar Pradesh. In such a situation Section 28-B of the Act is not at all attracted. It is only when a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State of Uttar Pradesh that Section 28-B of the Act is attracted. The case of the petitioners is covered by Section 28-A of the Act. It applies to a case where a person intends to bring, import or otherwise receive in the State from any place outside the State any taxable goods under the Act. If a person importing or receiving into the State is a registered dealer, he has to obtain a declaration in form XXXI from the Sales Tax Officer concerned as provided by Rule 85. If a person other than a registered dealer wishes to import or receive into the State from any place outside the State, he has to obtain a certificate from the Sales Tax Officer concerned in form XXXII as provided by Rule 86. Section 28-B and Rule 87 are applicable to cases where the goods destined for place outside the State of Uttar Pradesh pass through the State of Uttar Pradesh on their onward journey. The provisions are not attracted where taxable goods are brought in imported or otherwise received into the State from any place outside the State. The petitioners could not legitimately demand transit pass at the point of entry into the State since the vehicles carrying the goods terminate the journey within the State and do not have to cross over to any other State.

5. The explanation appended to Section 28-A provides that for the purpose of this sub-section it shall be presumed that the goods were intended to be brought, imported or otherwise received into the State in connection with business unless the contrary is proved. If the petitioners subsequently despatch the goods brought into Uttar Pradesh to other States either by road or by rail, they can lead evidence to that effect and rebut the presumption that the goods were brought, imported or otherwise received into the State in connection with business in case sales tax is ought (sic) to be levied on them.

6. In these petitions no averment has been made that on any occasion the vehicles of the petitioners were refused entry or their goods seized or any demand under the Act was made.

7. As observed earlier, the petitioners are not at all concerned with Section 28-B of the Act, and consequently, it is not open to them to challenge the validity of that provision or of Rule 87. In our opinion the petitions are wholly misconceived and are hereby dismissed with costs.