(1985) 03 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65 of 1985

Great India Roadlines APPELLANT

Vs

The Assistant Commissioner (E), Sales Tax and Another RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

Citation : (1985) 60 STC 87

Hon'ble Judges : N.D. Ojha, J;A.N. Dikshita, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—This writ petition has been filed on the allegation that the petitioner carries on the business of transport and in the course of its business on 15th November, 1984 it took certain consignments of tea booked at Calcutta for being transported to Amritsar. The case of the petitioner further is that truck No. WMK 9166 belonging to one Mansoor was engaged for this purpose, that the truck carrying the consignment of tea aforesaid while being driven by Mahabir Singh, driver, crossed the State of Bihar on 21st November, 1984 and reached Naubatpur check post on the border of U. P. on 22nd November, 1984. The driver applied for a form 34 which was issued to him. He after getting the form filled by some person submitted it to the Sales Tax Officer at the aforesaid check post. In the aforesaid form motor parts was mentioned in place of tea as the commodity which was being transported. The Sales Tax Officer, after noticing the mistake, corrected the same in the column relating to the description of commodity in the copy of the form retained by him and instructed the driver to make the necessary correction in the copies with him. The driver, however, without getting the necessary correction made in the copies with him proceeded on his onward journey. When the truck reached Bulandshahr the goods were seized by the Sales Tax Officer, Mobile Squad, Bulandshahr, respondent No. 2, on the ground that even though the commodity as mentioned in form 34 was motor spare parts what was actually being transported was tea. The driver of the truck thereafter made an application for release of the goods aforesaid before the Assistant Commissioner (E), Sales Tax, Ghaziabad Circle, Ghaziabad, but the said application was dismissed. Another application was made before the Assistant Commissioner for release of the goods by the petitioner but that application was also dismissed mainly on the ground that an earlier application for release of the goods had been dismissed. The prayer contained in this writ petition is for the quashing of the orders whereby the application for release of the goods were dismissed and for the issue of a writ of mandamus directing the respondents to release the goods seized from truck No. WMK 9166 on 24th November, 1984 at Bulandshahr by the Sales Tax Officer, Mobile Squad, Bulandshahr. When the writ petition was presented on 4th February, 1985 the Standing Counsel prayed for and was granted three weeks time to file a counter-affidavit. A counter-affidavit of Sri B. P. Chaturvedi who was the Sales Tax Officer at the check post Naubatpur on the crucial date has been filed today.

2. On the facts of the instant case we are of opinion that it is a fit case which may be decided finally at this very stage as contemplated by the second proviso to Rule 2 of Chapter XXII of the Rules of the Court. We have accordingly heard counsel for the parties on the merits of the writ petition.

3. In paragraphs 5 and 6 of the aforesaid counter-affidavit it has been candidly admitted that when the truck aforesaid reached Naubatpur check post and the application in form 34 was made, the said application mentioned motor parts as the goods which were being transported whereas the other documents like bill, consignment note, etc., mentioned that what was being transported was tea and that he also found that the goods loaded on the vehicle was tea. After confirming that the goods loaded on the vehicle was tea and not motor parts he corrected the first copy of the transit motor (form 34) and asked the driver to correct the other two copies and get them initialed but instead of doing so the driver went away with the two copies of the form 34 without getting it corrected and initialed. In view of this counter-affidavit the case of the petitioner stands substantiated. It is true that the driver was not justified in going away without getting the two copies with him corrected and initialed out on that score alone the seizure of the goods cannot be justified when it is now apparent that the commodity which was being transported was tea and not motor parts and that it had erroneously been mis-described in form 34 which mis-description was corrected by the Sales Tax Officer of the check post Naubatpur after being satisfied about the mistake in the manner stated above. The order of seizure of the tea which was being transported on truck No. WMK 9166 as stated above therefore, deserves to be quashed and further direction deserves to be issued to release the aforesaid goods without any security being furnished.

4. In the result this writ petition succeeds and is allowed and order of the seizure of the goods aforesaid is quashed and the respondents are directed to release the aforesaid goods without getting any security furnished for the said purpose and permit the goods to proceed on its destination. There shall be no order as to

costs.

5. A copy of this order may be supplied to counsel for the petitioner on payment of usual charges within three days.